

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

SMARTFLASH LLC and)
SMARTFLASH TECHNOLOGIES) DOCKET NO. 6:13cv447
LIMITED)

-vs-

) Tyler, Texas
) 8:30 a.m.
APPLE INC.) February 19, 2015

TRANSCRIPT OF TRIAL
MORNING SESSION
BEFORE THE HONORABLE RODNEY GILSTRAP,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

MR. BRADLEY W. CALDWELL
MR. JASON D. CASSADY
MR. JOHN AUSTIN CURRY
CALDWELL CASSADY & CURRY
2101 Cedar Springs Rd., Ste. 1000
Dallas, Texas 75201

MR. T. JOHN WARD, JR.
WARD & SMITH LAW FIRM
P.O. Box 1231
Longview, Texas 75606

1 FOR THE DEFENDANTS:

2
3 MR. JAMES R. BATCHELDER
4 ROPES & GRAY LLP
5 1900 University Ave., 6th Floor
6 East Palo Alto, California 94303-2284

7
8 MS. CHING-LEE FUKUDA
9 MR. KEVIN J. POST
10 ROPES & GRAY LLP
11 1211 Avenue of the Americas
12 New York, New York 10036-8704

13
14
15 MR. ERIC ALBRITTON
16 ALBRITTON LAW FIRM
17 P. O. Box 2649
18 Longview, Texas 75606

19
20
21 COURT REPORTERS: MS. SHELLY HOLMES, CSR, TCRR
22 OFFICIAL COURT REPORTER
23 shelly_holmes@txed.uscourts.gov

24 MS. SHEA SLOAN, CSR, RPR
25 OFFICIAL COURT REPORTER
shea_sloan@txed.uscourts.gov

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27 Proceedings taken by Machine Stenotype; transcript was
28 produced by a Computer.

1 P R O C E E D I N G S

2 (Jury out.)

3 COURT SECURITY OFFICER: All rise.

4 THE COURT: Be seated, please.

5 All right. Is the Plaintiff ready to read into the
6 record any items from the list of pre-admitted exhibits used
7 during yesterday's portion of the trial that have not
8 otherwise been read into the record?

9 MR. CASSADY: Yes, Your Honor.

10 THE COURT: Please proceed.

11 MR. CASSADY: The Plaintiffs admit from yesterday
12 PX 753 and PX 754 and PX 755.

13 And that's all, Your Honor.

14 THE COURT: Any objection from the Defendant to
15 that rendition?

16 MR. POST: No objection, Your Honor.

17 THE COURT: All right. Do the Defendants have a
18 similar rendition to offer into the record?

19 MR. POST: Yes, Your Honor.

20 THE COURT: Proceed.

21 MR. POST: Defendants request admission of the
22 following exhibits: PX 205.002, PX 203.003, PX 54.001, DX
23 65, DX 68, DX 59, DX 100, DX 93, DX 67, DX 70, DX 101, DX 65,
24 DX 68, PX 9, PX 11, PX 100, PX 103.028, DX 305, and DX 21.

25 THE COURT: Any objection from the Plaintiff?

1 MR. CASSADY: No, Your Honor.

2 THE COURT: All right. The witness is back on the
3 witness stand.

4 Ms. Fukuda, you may return to the podium.

5 Ms. Mayes, please bring in the jury.

6 COURT SECURITY OFFICER: All rise for the jury.

7 (Jury in.)

8 THE COURT: Welcome back, Ladies and Gentlemen.

9 Please be seated.

10 All right. We'll continue with the direct
11 examination of the witness.

12 You may proceed, Ms. Fukuda.

13 MS. FUKUDA: Thank you, Your Honor.

14 GEORGE LIGLER, DEFENDANT'S WITNESS, PREVIOUSLY SWORN

15 DIRECT EXAMINATION (CONTINUED)

16 BY MS. FUKUDA:

17 Q. Good morning, Dr. Ligler.

18 A. Good morning.

19 Q. Now, yesterday -- at the end of yesterday, you were
20 recognized by the Court as an expert in computer systems
21 engineering and the areas pertinent to this case?

22 A. I believe so.

23 Q. Is there a difference between an expert witness and a
24 fact witness?

25 A. Yes, there is.

1 Q. And what is the difference?

2 A. Well, a fact witness testifies about facts to which that
3 witness has personal knowledge.

4 An expert witness connects the dots, if you will,
5 putting together facts and forming opinions.

6 Q. Were you in the courtroom when Apple's engineers
7 testified in this case?

8 A. Yes, I was.

9 Q. Are those Apple engineers who testified, expert or fact
10 witnesses?

11 A. My understanding is that they were fact witnesses.

12 Q. And were you in the courtroom when Smartflash's lawyers
13 asked whether there was anyone here to testify regarding why
14 Apple does not infringe?

15 A. Yes, I was.

16 Q. Are you here to give your opinions regarding whether
17 Apple infringes the Smartflash patents?

18 A. Yes.

19 Q. What is your conclusion?

20 A. My conclusion is that, for reasons that I'm going to be
21 going through, that Dr. Jones and Smartflash have not shown
22 that the accused products infringe the asserted claims.

23 Q. Dr. Ligler, what information did you review to form your
24 opinions that you'll be presenting today?

25 A. Well, a great deal. I reviewed the patents. I reviewed

1 selected portions of the prosecution or file histories of
2 those patents. I reviewed the asserted claims, of course,
3 which are part of the patents.

4 I reviewed the computer source code that Apple has
5 produced in this case, the source code representing the
6 software within the accused products.

7 I reviewed documentation -- various documents that Apple
8 has produced about the products.

9 I reviewed the Court's claim construction in terms of
10 the construing of particular terms used in the asserted
11 claims.

12 I reviewed the deposition testimony of Apple's
13 engineers, particularly their corporate witnesses; in other
14 words, witnesses who are speaking on behalf or testifying on
15 behalf of the corporation.

16 I additionally reviewed the expert report of Dr. Jones
17 and the claim charts which accompanied or were part of his
18 expert report.

19 I also experimented and -- and -- with the products
20 themselves -- the accused products themselves and did some
21 experimentation with those products.

22 Q. Thank you.

23 Dr. Ligler, can you tell the jury just a very -- give
24 them just a very quick refresher about the patents that
25 you're going to discuss today?

1 And let me pull up your slides for you.

2 A. Sure.

3 Well, we've already heard overviews of the -- of the
4 patents, and I'd simply like to focus on Figure 4A of the
5 patent.

6 What I've done is put in red letters discussions of --
7 within -- from the specification of what the various boxes in
8 the figures are. And there are two basic portions of this
9 figure in terms of my testimony.

10 The first is in the bottom right-hand portion of the
11 figure. And this is about data or content being supplied
12 through or using the -- under the auspices of a data supply
13 service provider S.P., Box 60, to a data access terminal, Box
14 40, and a data carrier, Box 30, is depicted within the
15 figure, within this embodiment, that a carrier plugs into the
16 data terminal.

17 I'm going to be talking about this portion of the
18 figure, in terms of the delivery of content and use rules,
19 use status data, and access rules that are discussed in the
20 patent related to that delivery and then subsequent use of
21 the content.

22 In the upper left-hand corner is a payment validation
23 authority, and P.V.A., Box 70, and this has to do with
24 payment data, payment validation terms within the asserted
25 claims. And I will not be testifying about that portion of

1 the figure.

2 Q. And what are we seeing here in this next slide? Does
3 this relate to what you just testified about?

4 A. Yes. It's sort of a cliff note summary of what I just
5 said. The access/use rule-related issues are what I will be
6 testifying about with regard to content, delivery, and use.

7 And the payment-related issues, I understand will be
8 discussed by Mr. Wechselberger later today.

9 Q. Dr. Ligler, could you provide us with an overview of
10 Apple's FairPlay to put your opinions into context? And
11 would you mind doing that with what Mr. Farrugia had
12 presented so that the jury can see where you -- how to plug
13 your opinions into what they've already seen on the screen?

14 A. Okay. Well, to link up with what Mr. Farrugia presented
15 yesterday, this is a chart from his presentation.

16 And as he testified, there is a process within Apple's
17 FairPlay system that based upon a request, which is
18 enumerated as -- as 1 to the Apple iTunes server, strong
19 protection, No. 2 -- and we'll go into in a little more
20 detail in just a few minutes as to what that strong
21 protection is -- comes to the user device.

22 You'll notice that there's a key highlighted in yellow.
23 That is an account key. We'll talk about that a little
24 later. There's several keys involved, as Mr. Farrugia
25 testified, keys to protect the keys.

1 And then using the information that is downloaded to the
2 device from No. 2 and No. 3, a uniform resource -- resource
3 locator, or URL, is used to obtain the content from a
4 third-party content delivery network, and the protected
5 content, protected by a key other than the account key, is
6 sent to the user device.

7 At the user device, there is a keybag, which contains
8 the account key, and the protected content is also there.
9 And, again, we'll go into this in a little more detail.

10 Q. Focusing on the user device and the keys that you talked
11 about, could you explain us -- explain to us how the keys
12 relate to each other?

13 A. Well, yes. There -- there is within an -- and the
14 example we're taking here is music. It's an audio file. So
15 for this type of content, within the audio file on the user
16 device, the -- the iPad or the -- or the iPhone or the iPod
17 Touch, is firstly the protected content within the file, and
18 then the security information or Sinf that Mr. Farrugia
19 mentioned yesterday.

20 Dr. Jones has also mentioned the Sinf. And the Sinf has
21 a public part and a private part. The public part is open
22 for access. The private part is encrypted. In the keybag,
23 there is the account key, and various other identifiers, such
24 that with the account key -- thank you -- with the account
25 key, the private part of the Sinf can be unlocked to get the

1 content key. And the content key is the yellow key that's
2 protecting the content.

3 So, again, as Mr. Farrugia testified, we have keys
4 protecting keys. So once the account key is retrieved from
5 the keybag, it can be used to unlock, descramble, decrypt the
6 private part of the Sinf to get the content key. The content
7 key is then used to decrypt the content, and the content can
8 then be played.

9 Q. Thank you. Going back to Mr. Farrugia's system diagram,
10 could you show us where the Sinf is found in that series of
11 transactions?

12 A. Sure. It's found in No. 2, which is the -- labeled the
13 strong protection. The Sinf is sent along with the account
14 key and the URL to the user device.

15 Q. And does the Sinf contain any information other than the
16 content key?

17 A. Oh, yes, it does. If we put up a figure from one of the
18 Apple product documents --

19 MS. FUKUDA: Your Honor, we will request that the
20 courtroom be sealed for showing this highly-confidential
21 figure from Apple's technical documents.

22 THE COURT: Is there objection?

23 MR. CALDWELL: No objection, Your Honor.

24 THE COURT: Counsel, is it for this -- do you have
25 any anticipation as to the length of the necessary sealing?

1 MS. FUKUDA: There is this one upcoming slide, and
2 then there are four others a little bit later, and that's the
3 extent of the sealing.

4 THE COURT: All right. Then when you've gotten
5 through that material, please advise me so that we can unseal
6 the courtroom then.

7 MS. FUKUDA: Thank you, Your Honor.

8 THE COURT: At counsel's request and without
9 objection, the Court will order the courtroom sealed.

10 If you're present and not subject to the existing
11 protective order in this case, you should excuse yourselves
12 from the courtroom and remain outside until the courtroom is
13 unsealed.

14 (Courtroom sealed.)

15 (This portion of the transcript is Sealed and filed
16 as Sealed Portion No. 4 under separate cover.)

17 (Courtroom unsealed.)

18 THE COURT: All right. Let's proceed.

19 Q. (By Ms. Fukuda) Dr. Ligler, looking at Slide 27 here --

20 A. Uh-huh.

21 Q. -- have you addressed all of the use rules that
22 Dr. Jones had identified?

23 A. I believe so, yes.

24 Q. And what is your conclusion?

25 A. Well -- okay. On Claim 26 of the '772 patent, I've

1 highlighted two claim elements, each of which recite use
2 rules. And Dr. Jones, in my view, not having identified the
3 use rules of the claim, I have drawn the conclusion that
4 these two claim elements are not in the accused products.

5 Q. Do you have any other opinions as to whether Dr. Jones'
6 use rules are applicable to these claims?

7 A. Well, yes. With regard to Claim 32, the -- I've
8 highlighted the two elements that the -- whoops --

9 Q. Sorry.

10 A. With regard to Claim 32, the other asserted claim with
11 use rules, I've done a similar thing to what I did for Claim
12 36, and the final two elements, I find are not -- have not
13 been shown to be in the accused products.

14 Q. And what is your other opinion?

15 A. Well, for the modality of iOS parental controls, for
16 that functionality within the accused products, an additional
17 reason to what I've already said that the claimed use rules
18 have not been shown to be in the Apple products is that the
19 claims require steps in an order.

20 The user makes a selection of content and then reads --
21 the device reads the use rules and use status data pertaining
22 to that -- that selected content item, and then the device
23 evaluates whether access should be permitted for the
24 requested content item.

25 And as I discussed earlier, though, the parental control

1 or the restrictions settings are a little different than the
2 earlier chart, you can't select content that's been
3 restricted.

4 Q. And which asserted claims does this opinion relate to?

5 A. Well, again, Claims 26 and 32. Here, I've asked for
6 the -- just focused on the flow of -- of selection and
7 evaluation of use rules to see whether access is permitted.

8 And so these are additional reasons to those I've
9 already presented, that Claims 26 and 32 of the '772 patent
10 have not been shown to be in the accused products.

11 Q. Dr. Ligler, I apologize. Let's go back to Figure 6 of
12 the patent.

13 MS. FUKUDA: Could we pull that up again?

14 Q. (By Ms. Fukuda) And, again, I asked you earlier
15 regarding those elements on the bottom. And in particular,
16 there's an Item 134?

17 A. Oh, yes.

18 MS. FUKUDA: Let's go to the respective description
19 in the specification. I understand that it should be
20 Column 15. Scroll down to about Line 38.

21 There we go. Lines 38 to 47. Thank you.

22 Q. (By Ms. Fukuda) How does the patent describe Figure 6 in
23 the context of content and access rules?

24 A. Well, the patent describes that it is the CRM and
25 payment distribution code 134a, which is found in Figure 6 in

1 processor 134, that both downloads the data item and provides
2 the content use rules.

3 So that one processor performs both of the functions
4 discussed in the asserted claims in terms of what the data
5 supplier does.

6 Q. Would you just read through that first -- I believe
7 that's just one sentence. Could you read that and show us
8 where it talks about how content use rules and the content
9 relate to each other?

10 A. Okay. Again, this paragraph is talking about the
11 software within one of the four processors depicted across
12 the bottom row of Figure 6.

13 And in Line 40, one of the functions of the code 134a is
14 indicated to download a data item from the content provider
15 system to a content access terminal.

16 And then right after that, the patent indicates that it
17 is the software 134a that also provides the content use rules
18 with the data item.

19 Q. And when Dr. Jones was asked about Figure 6, did he
20 identify this passage to the jury?

21 A. This passage was not discussed.

22 MS. FUKUDA: Switch back to the slides.

23 Thank you.

24 Q. (By Ms. Fukuda) Dr. Ligler, what is the final topic that
25 you'll be addressing today?

1 A. Well, for apps and purchase content, an additional
2 reason to those I've articulated already for the asserted
3 claims not being found -- or several of the asserted claims
4 not being found within the -- within the accused modalities
5 of apps and purchase content, is that the use status data
6 that has been identified by Smartflash and Dr. Jones is -- is
7 not the use status data of the claims.

8 Q. And which claims recite use status data?

9 A. Claims 26 and 32 of the '772 patent, the same claims
10 that we've just discussed with regard to use rules.

11 Q. Looking at Claim 26 of the '772 patent, what has Dr.
12 Jones identified as the claimed use status data?

13 A. Well, information in the Sinf, Dr. Jones drew some
14 charts about the Sinf and showed several fields -- several of
15 the fields that are within the Sinf, or security information,
16 and identified those as use status data and then the content
17 rating for a particular piece of content.

18 Q. And do you have an opinion as to whether these elements
19 are the claimed use status data?

20 A. Yes, I do. They're not. If we go to a -- the next
21 chart, I'll articulate more about why.

22 Q. Would you be able to do that without the next chart, Dr.
23 Ligler?

24 A. I sure would.

25 Q. Okay. Go ahead.

1 A. The information identified in -- in the Sinf really does
2 not pertain to use status. It's a question of what is data
3 that pertains to use status.

4 The content rating, as testified to by Mr. Mirrashidi
5 yesterday -- and I -- I certainly have the same view --
6 doesn't tell -- doesn't tell you anything about whether the
7 product has ever been used or that content has ever been
8 viewed or whether it's going to be viewed, and, therefore,
9 it's not the claim use status data.

10 Q. And what about content rating?

11 A. I just discussed content rating.

12 Q. My apologies.

13 What does this mean for Claim 26 of the '772 patent?

14 A. Well, I've highlighted one of the two elements that I
15 highlighted earlier in Claim 26 because it is the element
16 that talks about evaluating use status data and use rules to
17 determine whether access is permitted.

18 Again, it's very important, when looking at the claim
19 elements, to look at all the words of -- of the element.
20 It's not just that it is use status data; it also needs to be
21 evaluated, that data, along with use rules to determine
22 whether access is permitted.

23 So all of those conditions must be met for data to be
24 the claimed use status data.

25 Q. And what is your conclusion with respect to Claim 26?

1 A. Well, that here is an additional reason for apps and
2 purchase content, that Dr. Jones and -- and Smartflash have
3 not shown infringement of this claim by the accused products
4 with regard to apps and purchase content.

5 Q. And what is your opinion regarding Claim 32 of the '772
6 patent?

7 A. Very similar. The final claim element of Claim 32 --
8 well, the final claim element of Claim 30, I guess, also has
9 the same recitations about evaluating use status data to
10 determine whether access is permitted.

11 Therefore, for Claim 32 as well, there's an additional
12 reason to the reason I already gave that had to do with use
13 rules, that the accused products don't use the claim.

14 Q. And, Dr. Ligler, have we covered all three topics you'll
15 be testifying?

16 A. Yes, I have.

17 Q. Can you summarize for the jury your conclusions?

18 A. Sure.

19 I've highlighted here the particular claim elements of
20 the four asserted claims, which I have not found within the
21 accused products to be -- to have been shown to be there by
22 Dr. Jones.

23 And, again, they have to do with access rules, use
24 rules, and for apps and purchase content, use status data.

25 Q. Finally, Dr. Ligler, are you aware of any additional

1 reasons why Dr. Jones has failed to show infringement of the
2 asserted claims?

3 A. Well, my understanding is that Mr. Wechselberger will be
4 talking about additional reasons later today.

5 Q. Thank you, Dr. Ligler.

6 MS. FUKUDA: We pass the witness.

7 THE COURT: Thank you.

8 Cross-examination by the Plaintiff.

9 MR. CALDWELL: Thank you, Your Honor.

10 May I approach the witness with binders?

11 THE COURT: You may.

12 MR. CALDWELL: Thank you.

13 THE WITNESS: Good morning.

14 CROSS-EXAMINATION

15 BY MR. CALDWELL:

16 Q. Good morning, Dr. Ligler.

17 A. Good morning.

18 Q. It's good to see you again. I met you at your
19 deposition, correct?

20 A. Yes. It's good to see you, too.

21 Q. And just so there's no confusion of this, you don't
22 endorse any of the opinions of Dr. Wechselberger, correct?

23 A. I don't know precisely what they are, so the answer
24 would be: Correct, yes, sir.

25 Q. Now, you explained earlier that fact witnesses talk

1 about personal knowledge, and that's not what you're here to
2 do, correct?

3 A. Correct, sir.

4 Q. You're a compensated expert witness?

5 A. I am.

6 Q. What is your hourly rate, sir?

7 A. My hourly rate for this type of work is \$600 an hour.

8 Q. Dr. Ligler, what are the different sets of use status
9 data and use rules that Dr. Jones pointed to for the '772?

10 A. Well, I had them on some charts. They are values that
11 are found in the keybag. I enumerated them. We could put
12 the charts back up.

13 Q. Well, I want to know if you remember what they are, the
14 different sets of use status data and use rules that Dr.
15 Jones pointed to.

16 A. Well, with regard to use rules, the keybag and the
17 rental keybag, rental duration, playback duration, the
18 account key. I might have missed one or two, but that's most
19 of them.

20 Q. Every one of those things you just said in use of an
21 Apple device is read, correct?

22 A. Read by code within the device, sir?

23 Q. Yes, sir.

24 A. Yes.

25 Q. And every one of those things you just pointed to is

1 evaluated; isn't that correct, sir?

2 A. Evaluated in one way or another, yes.

3 Q. In the case of the '720 and the '221 patent, what is the
4 access rule that Dr. Jones points to?

5 A. He pointed to, I believe, five fields. Again, they
6 were -- let's see, "rentalDuration," "playbackStartTime,"
7 "rentalStartTime," play -- play -- "playbackStartTime," and
8 "Account Key."

9 Q. And every one of those is read and evaluated, correct?

10 A. Read, yes. Evaluated in some way, yes.

11 Q. Looking at some of the points that you made -- well, I'm
12 going to go through your points in just a minute. Let me --
13 let me go somewhere else first. I'm sorry.

14 Do you believe patents are important, Dr. Ligler?

15 A. Yes, sir, I do.

16 Q. And why is that?

17 A. Because they permit an inventor to disclose what the
18 inventor has invented; and presuming that the claims are
19 granted by the United States Patent Office, to exclude others
20 from practicing the claims for a specific period of time.

21 There's a trade involved. The user gets a monopoly,
22 effectively an ability to exclude within the United States
23 for a United States patent. But the tradeoff is that the
24 details of the invention are presented to the public; and at
25 the end of the pendency of the term of the patent, anyone can

1 use them. And there's full disclosure of what the invention
2 is.

3 Q. So, for example, the formula for Coke, Coca-Cola, that's
4 not in a patent, correct?

5 A. I don't think it is, but I don't know for sure.

6 Q. Well, nobody's been able -- nobody besides Coca-Cola has
7 been able to use that formula, correct?

8 A. That's my understanding.

9 Q. And that is because they chose to keep it as a trade
10 secret as opposed to publishing it, putting it in a patent
11 where other people can learn, fair?

12 A. Fair.

13 Q. Now, you agree that what Mr. Racz and his co-inventor
14 did is they took their invention and they put it down in
15 patent applications filed in 1999 and 2000, correct?

16 A. Yes, sir.

17 Q. And the disclosures they put in their patent haven't
18 changed since then, have they?

19 A. No, they haven't.

20 Q. The United States Patent and Trademark Office -- in
21 exchange for Mr. Racz and Mr. Hulst putting that in a patent
22 application and advancing the state of the art, the United
23 States Patent and Trademark Office has granted them property
24 rights, correct?

25 A. Correct, sir.

1 Q. How many claims need to be infringed for there to be
2 patent infringement?

3 A. One, sir.

4 Q. Just one claim for each patent, correct?

5 A. Yes, sir.

6 Q. What are the asserted claims in this case?

7 A. Well, there are four asserted claims.

8 Q. Okay.

9 A. One from the '720 patent.

10 Q. Which one from the '720 patent?

11 A. Claim 13, sir.

12 Q. Okay.

13 A. And then a claim from the '221 patent, and then two
14 claims from the '772 patent.

15 Q. Which claim from the '221?

16 A. I believe it's 32, sir.

17 Q. And which claims from the '772?

18 A. I believe it's 26 and 32, sir.

19 Q. And if the jury finds that any one claim is infringed,
20 there's patent infringement in this case, correct?

21 A. That is correct, sir.

22 Q. Do you understand that in exchange for Mr. Racz and Mr.
23 Hulst taking their invention and disclosing it, they only
24 have a limited time to enforce their patents?

25 A. That's true, sir.

1 Q. And that time is calculated from when they put all that
2 subject matter in patent applications about 15 years ago,
3 correct?

4 A. Yes.

5 Q. And that information they submitted 15 years ago is the
6 support for the claims that we have in this case, correct?

7 A. Yes, sir.

8 Q. Did you hear Dr. Jones explain that patents are written
9 for a person of ordinary skill in the art?

10 A. I read his testimony, yes, sir.

11 Q. Were you here when he testified?

12 A. Not for the first hour.

13 Q. Dr. Ligler, do you agree that patents are written for a
14 person of ordinary skill in the art?

15 A. Yes, sir, I do.

16 Q. You figure Apple has some persons of ordinary skill in
17 the art that pertains to these patents?

18 A. Yes, sir.

19 Q. How many would you guess?

20 A. I'd be speculating. Quite a few, I would assume.

21 Q. Probably thousands?

22 A. With regard to this particular field of art, possibly.
23 That's a little higher than I would put the number.

24 Q. Sir, when you prepared your report, did you do any
25 network captures?

1 A. No, I didn't.

2 Q. You didn't use Wireshark or Fiddler, those programs that
3 Dr. Jones described?

4 A. No, sir, I did not.

5 Q. And if we review your materials considered, did you look
6 at Dr. Jones's network captures?

7 A. Specifically, no.

8 Q. Early on in your presentation, you showed us a slide
9 with just sort of two things on it, and -- and one related to
10 access rules or use rules, and the other related to payment,
11 correct?

12 A. Related to what, sir? I'm sorry?

13 Q. Payment?

14 A. Yes, yes.

15 Q. And what you were saying was you were not going to
16 testify about payment -- the payment data parts, correct?

17 A. That's correct, sir.

18 Q. But you looked at some of the code for payment data in
19 your preparation, right?

20 A. That's true, sir.

21 Q. And you will not be offering any opinion that the
22 payment data, payment validation system, or payment
23 validation data elements are not met, correct?

24 A. I'm not offering any opinions of that nature, correct,
25 sir.

1 Q. There may not be an ideal spot, but can you at least
2 kind of see the chart, Dr. Ligler?

3 A. I'll do my best.

4 MR. CALDWELL: Your Honor, may I use the -- the
5 chart throughout the presentation?

6 THE COURT: You may.

7 MR. CALDWELL: Thank you.

8 Q. (By Mr. Caldwell) All right. Dr. Ligler, you agreed
9 with me that you did review some of the -- the payment code,
10 correct?

11 A. Yes.

12 Q. Were you asked to form an opinion as to whether the
13 payment data elements were met?

14 A. No, sir, I was not.

15 Q. And you haven't reached a conclusion one way or another
16 whether the payment elements are met in the claims, correct?

17 A. That is correct, sir.

18 Q. Now, with regard to your expert report, who wrote it?

19 A. I wrote -- personally typed, if you will, about 80
20 percent of it, as I recall. The remainder, a draft, was
21 supplied of particular subsections, which I edited heavily,
22 but I didn't create the original draft.

23 Q. And, sir, I don't know if you can see it. What I've
24 written is: Report mostly written by witness. And I'll put
25 a check there.

1 Even though you wrote your report, you will agree with
2 me that you did not initially come up with most of your --
3 the opinions that are in your report, correct?

4 A. No, I wouldn't agree with that. Some of the opinions I
5 did not initially -- some of what became my opinions or the
6 positions that became my opinions were initially put forward
7 for my consideration by others. The majority of the opinions
8 I formed myself without someone else having made the first
9 suggestion.

10 Q. Were you here during the testimony of Mr. Mirrashidi
11 yesterday?

12 A. Yes, sir, I was.

13 Q. Did you hear him describe that the truth is in the code?

14 A. Sure did.

15 Q. Do you agree with that?

16 A. I sure do.

17 Q. Why do you agree with that?

18 A. The reason I agree with that is because I've got 39
19 years of experience in -- in computer systems. And while
20 documentation for products is generally accurate and
21 engineers' recollections about products are even more
22 generally accurate, I found through experience that to know
23 really what the product does, one needs to -- one needs to
24 look at the code.

25 One example that I testified about in my deposition was

1 that -- was dealing with a very good design engineer, and he
2 honestly thought that something was in the product. When we
3 checked the code, it wasn't.

4 Q. It happens, correct?

5 A. It happens, yes.

6 Q. And you would have had access to Apple's engineers if
7 you had wanted to talk to them, correct?

8 A. Yes, sir, that's correct.

9 Q. But you didn't talk to Apple's engineers --

10 A. No, I didn't.

11 Q. -- in preparing your report?

12 A. I'm sorry. No, I didn't.

13 Q. Okay. And one of the reasons is because you thought you
14 could go back and verify things in the code, correct?

15 A. That was one of the reasons, yes, sir.

16 Q. Nevertheless, you only looked at some of the code cited
17 by Dr. Jones, correct?

18 A. That's correct.

19 Q. Either way, it's true, isn't it, that you would not want
20 to give an infringement report or non-infringement report
21 without looking at the code that pertains to the issues?

22 A. That is correct, sir.

23 Q. And one of the reasons is source code provides at least
24 the same, if not a higher level of detail than verbal
25 testimony of engineers, correct?

1 A. Correct, sir.

2 Q. Would you agree that it was the attorneys on the
3 Smartflash side that took the depositions of Apple's
4 engineers in this case?

5 A. The ones I read, yes, sir.

6 Q. And so it was Smartflash's attorneys, in view of what
7 they had seen in the code or the technical documents, that
8 got to decide what they would ask of the engineers, fair?

9 A. Fair.

10 Q. Did you ever put out any questions that you wanted
11 answered that should be answered by the engineers at Apple?

12 A. Yes.

13 Q. Were your questions asked of Apple's engineers in
14 depositions?

15 A. No.

16 Q. Prior to putting out the non-infringement reports in
17 this case, you never spoke to Dr. Wechselberger that we'll
18 hear -- or Mr. Wechselberger that we'll hear from later,
19 correct?

20 A. That is correct, sir.

21 Q. And you never -- you weren't Skyping with him or
22 emailing with him or anything like that, correct?

23 A. That is correct, sir.

24 Q. You never spent any time whatsoever explaining technical
25 documents to him or the operation of a code to him, correct?

1 A. Correct.

2 Q. When you were picking testimony to review, even leading
3 up to the time of your deposition, you had not read the
4 deposition of Dr. Jones where he explained and answered
5 questions that were posed to him about his infringement
6 analysis, right?

7 A. That's correct, sir.

8 Q. By the time you gave your report, how many items of
9 content was it that you'd bought of the pertinent types of
10 content on the accused products? Was it three or four?

11 A. Yes.

12 Q. What kind of content -- what kind of things was it that
13 you bought in the three or four items that you bought before
14 putting out your non-infringement report?

15 A. Oh, there was a movie, there was a -- I believe a TV
16 show, there was an in-app purchase, and I think an app.

17 Q. Did you ever buy any music as part of that testing?

18 A. Might have. Might have. I don't recall specifically.

19 Q. Did you ever get around to buying a whole album?

20 A. No, sir.

21 Q. Is the operation of FairPlay important to your opinions
22 in this case?

23 A. Yes.

24 Q. Nevertheless, when I took your deposition, you had what
25 you characterized as a general understanding of what FairPlay

1 does?

2 A. That's correct.

3 Q. And you based that on the deposition testimony of

4 Mr. Augustin Farrugia, correct?

5 A. Largely. I'd also looked at some of the code.

6 Q. Before you put out a report saying Apple doesn't
7 infringe, I think you said you'd spent half a day to a day
8 studying FairPlay; is that right?

9 A. That sounds about right. I believe I testified I spent
10 a couple of days with the code. A portion of that would have
11 been looking at FairPlay, yes.

12 Q. Well, my -- my specific question was, how much time did
13 you spend developing your understanding of FairPlay, and I
14 believe you testified it was half a day to a day, correct?

15 A. Sure.

16 Q. At a high level, what is claimed in Claim 26 of the
17 '772 -- just at a very high level?

18 A. A handheld multi-media terminal.

19 Q. And what's claimed in Claim 32?

20 A. A data access terminal.

21 Q. And in those claimed handheld multi-media terminals and
22 data access terminals, you -- you have a terminal that can
23 download content and rules, correct?

24 A. Yes.

25 Q. And it can play content, correct?

1 A. Yes.

2 Q. Do you have an understanding from reading the patent how
3 those would operate?

4 A. I believe so, yes.

5 Q. Okay. They're described in the patent, correct?

6 A. I obtained an understanding sufficient for what I was
7 asked to look at from the patent, yes.

8 Q. You're not here telling the jury they're not described
9 in the patent, are you?

10 A. I've given no such opinion.

11 Q. We talked a little bit about use rules and use rule
12 data. You believe in your analysis that use rules and use
13 rule data, those terms are synonymous, correct?

14 A. In my analysis -- I believe that Dr. Jones in his
15 analysis equated those two terms. As I testified at my
16 deposition, I do not believe that use rules and use rule data
17 are the same thing.

18 Q. So you testified in your deposition that your analysis
19 was done under the assumption that the terms were synonymous,
20 correct?

21 A. Under -- using the same assumption, as did Dr. Jones,
22 that they were synonymous, correct.

23 Q. Dr. Ligler, your analysis was done under the assumption
24 that use rules and use rule data were synonymous, correct?

25 A. Correct.

1 Q. And use rule data can be values in a table, can't it?

2 A. Use rule data can be valued in a table, yes.

3 Q. When you went through your example earlier, do you
4 recall talking about the 30-days number?

5 A. Yes, I do.

6 MR. CALDWELL: Mr. Mortensen, do we have Dr.
7 Ligler's slides? Would you mind putting up the slide that is
8 DD5.16?

9 Apple's in-house attorneys -- I'm not sure what's
10 going on.

11 Are you wanting to seal the courtroom?

12 THE COURT: Approach the bench, Counsel.

13 (Bench conference.)

14 THE COURT: You want to use a slide that Ms. Fukuda
15 used on direct; is that right?

16 MR. CALDWELL: Yes, Your Honor.

17 THE COURT: Was it used during the time the
18 courtroom was sealed?

19 MR. CALDWELL: I -- probably so. I honestly don't
20 know.

21 MS. FUKUDA: Is this the slide you wanted to show?

22 MR. CALDWELL: This is the one I wanted to show.

23 MS. FUKUDA: You don't need to seal for this slide.

24 MR. CALDWELL: I wasn't thinking --

25 THE COURT: Tell them to pull it up. Tell your

1 people to pull it up, Ms. Fukuda.

2 MS. FUKUDA: Okay.

3 (Bench conference concluded.)

4 Q. (By Mr. Caldwell) Do you recall using this slide on
5 your direct, sir?

6 A. Yes.

7 Q. And I think what you're saying is the patents require
8 what's on the left and Apple does what's on the right, at a
9 general level; is that about right?

10 A. That's about right.

11 Q. Okay. What computer language is the box on the left?
12 User has only 30-days to access the content. What computer
13 language is that written in?

14 A. It could -- it's not written as recited in the patent in
15 any particular language. It could be written in any one of a
16 number of programming languages.

17 Q. Well, what I'm asking is, those words, even if we use
18 the exact example you showed the jury --

19 A. Uh-huh.

20 Q. -- user has only 30 days to access the content, are you
21 aware of any computer languages that could read that?

22 A. Just like that?

23 Q. Yes, sir.

24 A. Unless it's in the syntax of a programming language for
25 which a compiler was -- was programmed, the answer would be

1 no.

2 Q. I'm asking about your opinion, Dr. Ligler?

3 A. Sure.

4 Q. Are you aware of any computer language that that would
5 apply to, that language that's in your box right there on
6 your slide?

7 A. No. I'm aware of a number of programming languages in
8 which that rule could be expressed.

9 Q. Dr. Ligler --

10 MR. CALDWELL: Thank you very much. I appreciate
11 it.

12 Q. (By Mr. Caldwell) Dr. Ligler, I believe you said in
13 your direct, you -- you gave an analogy of like a rule that
14 your mom might tell you about your bedtime or something along
15 those lines?

16 A. I certainly had those, yes.

17 Q. But then right after that, didn't you testify that what
18 you need to look at is what a number in a computer
19 represents?

20 A. I did testify that one needs to look at what a number in
21 a computer represents, yes.

22 Q. Dr. Ligler, what does the 30 represent in the context of
23 a movie rental?

24 A. In the accused products, it represents the maximum
25 length of time of the rental when that number is accessed and

1 evaluated within the accused products.

2 Q. When you rent a movie from the iTunes Store, you get
3 usage rights or usage rules, correct?

4 A. The usage rules of the claim? I just think I've
5 testified no.

6 Q. Sir, when you rent a movie in the iTunes Store, you get
7 usage rights or usage rules, correct?

8 A. You certainly get usage rights, and there are rules, but
9 I don't think they're the rules of the claim.

10 Q. Apple refers to those usage rights you get
11 interchangeably with usage rules, doesn't it?

12 A. I don't know.

13 MR. CALDWELL: Go to the iTunes Store support page.

14 Q. (By Mr. Caldwell) Dr. Ligler, this is a website off of
15 Apple's own support page. And do you see there at the very
16 top, it just says: iTunes Store, Rental Usage Rights --

17 MR. CALDWELL: Even the big headline right under
18 that, Mr. Mortensen.

19 Q. (By Mr. Caldwell) -- Movie Rental Usage Rights, and then
20 at the subheading below, Apple refers to those as the iTunes
21 Store Movie Rental Usage Rules.

22 Do you see that?

23 A. Sure do.

24 Q. You understand that rights and rules can be used
25 interchangeably, correct?

1 A. Some people might use them interchangeably. Within the
2 context of a patent claim, one needs to look at the entire
3 limitation, but yes.

4 MR. CALDWELL: Thank you, Mr. Mortensen.

5 Q. (By Mr. Caldwell) So if I understand your opinion
6 correctly, you're looking for the source code to say
7 something like, check to make sure current time is within the
8 window -- rental window?

9 A. That would be an example. That was not identified by
10 Dr. Jones.

11 Q. Or you're looking for the code to say something like the
12 current time should be somewhere inside of the window, things
13 like that, correct?

14 A. That would be another portion of what one would be
15 looking for; again, not identified by Dr. Jones.

16 Q. Dr. Ligler, when we go through your report, I think we
17 find three code files that you mentioned in your report,
18 correct?

19 A. I might have mentioned more, but today I showed, I
20 think, three, yes.

21 Q. And, sir, Apple's counsel, the way we do things here in
22 the procedure, they -- they hand us a binder with the
23 exhibits that you're going to use, correct?

24 Is that your understanding?

25 A. Yes.

1 Q. And there's a big section -- well, I don't know --
2 56 pages that's your report, and then there's the resume in
3 part. But there's -- this section right here is the source
4 code section that Apple included in your -- your binder for
5 court, right?

6 A. I'll take your word for it, sure.

7 Q. Well, you have a copy of the binder sitting up there.
8 Maybe to the left?

9 A. Sorry.

10 Q. Maybe the binder to your left there. I'm not -- I'm not
11 sure.

12 A. Yes.

13 Q. You didn't cite anywhere near all the code that
14 Dr. Jones cited just on the reading use rules element and the
15 evaluating use rule element, did you?

16 A. No, I didn't. Didn't need to.

17 Q. Remember how I asked you if you'd want to see in the
18 code something like, check to make sure current time is
19 within the rental window?

20 A. Yes, I do.

21 Q. Dr. Ligler, did you even look at the piece of code that
22 Dr. Jones tacked to the foam board for the evaluate rules
23 element?

24 A. As I testified in my deposition, I looked at some code
25 with regard to rental duration, yes.

1 Q. Dr. Ligler, did you even look at the piece of code that
2 Dr. Jones tacked to the foam board on the evaluate use rules
3 element?

4 A. I probably did before my deposition.

5 Q. Okay. Which file was that?

6 A. I'm -- I'm not sure. If you show it to me, we can -- we
7 can take a look.

8 Q. What files did you cite in your report, Dr. Ligler?

9 A. In my report, I filed -- I -- I cited specifically
10 several header files, sir, that had to do with the definition
11 of program variance.

12 Q. What is a .H file?

13 A. It's a header file. It provides definitions that are
14 used in the computer source code. It defines variables and
15 data structures and -- and procedures.

16 Q. What is a .C file?

17 A. A .C file is a file that uses the definitions from the
18 header file and contains executable code.

19 Q. That actually performs steps, correct?

20 A. Yes.

21 MR. CALDWELL: Can I have the document camera?

22 Mr. Ward, do you remember how to do this thing?

23 Your Honor, I'm going to show a piece of source
24 code. I guess we have to seal the courtroom.

25 THE COURT: All right. What's your anticipated

1 length of time to cover anything that might be confidential?

2 MR. CALDWELL: That's a very fair question. I hope
3 just a couple of minutes. Obviously, I don't know how
4 certain questions will be answered, but I hope it's just a
5 couple of minutes.

6 And then what I'll try to do after that, is maybe
7 just hold something up in a binder or -- or Redweld or
8 something so I don't have to --

9 THE COURT: The last time I asked I was told
10 5 minutes and it was 20. I'm just trying to get a realistic
11 idea.

12 MR. CALDWELL: I sincerely hope it's a couple of
13 minutes. I mean, I just don't know where I'll have the need
14 to impeach.

15 THE COURT: All right. Is there objection from the
16 Defendant?

17 MS. FUKUDA: No objection.

18 THE COURT: All right.

19 MR. CALDWELL: Mr. Racz needs to leave.

20 THE COURT: All right. I'll order the courtroom
21 sealed. Those of you present, not subject to the protective
22 order in this case should exit the courtroom at this time and
23 remain outside until you're invited to return.

24 (Courtroom sealed.)

25 (This portion of the transcript is Sealed and filed

1 as Sealed Portion No. 5 under separate cover.)

2 (Courtroom unsealed.)

3 MR. CALDWELL: Your Honor, may counsel and I
4 approach while folks are getting situated?

5 THE COURT: Approach the bench.

6 MR. CALDWELL: Thank you.

7 (Bench conference.)

8 MR. CALDWELL: In Dr. Jones' presentation, backing
9 up, we had a motion in limine that all we were going to talk
10 about about compensation for experts was basically their
11 hourly rate.

12 In Dr. Jones' presentation, when being
13 cross-examined, Ms. Fukuda went further and said something
14 like: 80 percent of your income comes from...

15 I don't really think that was -- that was
16 permitted. But Part A, I would assume I can at least do the
17 same thing with -- with Dr. Ligler as to what she did with
18 Dr. Jones with that question.

19 And my second part is, it's also true that roughly
20 two-thirds of that comes from working for their firm.

21 MS. FUKUDA: I'm sorry. I didn't catch that
22 two-thirds.

23 MR. CALDWELL: Of -- of his consulting work is
24 working for your firm.

25 And we had tried to agree on this issue by saying

1 that all we would do is talk about rates, and she just went
2 there on cross-examination of Dr. Jones.

3 MS. FUKUDA: Your Honor, the motion in limine said
4 that we would not talk about total compensation for the case
5 or prior work that the expert did for either the party or the
6 law firm.

7 It does not exclude generally what percentage of
8 their work was for a particular category, like patent
9 litigation cases and so forth. We don't have an objection to
10 him asking about what percentage of time Dr. Ligler spends on
11 patent litigation cases, but we will object if it touches
12 upon what he does for a party or the counsel in this case.

13 MR. CALDWELL: I feel she just charged right
14 through that door, and we thought we should have approached
15 beforehand. By getting into 80 percent of his income and not
16 to get --

17 THE COURT: You can ask Dr. Ligler what percentage
18 of his income comes from consulting work like this. I don't
19 recall Dr. Jones being asked how much of his income came from
20 your --

21 MR. CALDWELL: He wasn't.

22 THE COURT: -- firm or Smartflash, so we'll stop at
23 that point.

24 MS. FUKUDA: Thank you, Your Honor.

25 (Bench conference concluded.)

1 THE COURT: All right. Let's proceed.

2 MR. CALDWELL: Thank you, Your Honor.

3 Q. (By Mr. Caldwell) Dr. Ligler, I'd like to talk to you
4 about your -- the statements you made about Akamai.

5 A. Very good, sir.

6 Q. Were you here during the testimony of Mr. Farrugia and
7 Mr. Mirrashidi yesterday?

8 A. Yes, sir, I was.

9 Q. Now, is the point of your Akamai argument that the rules
10 Dr. Jones points to are supplied by Apple, but the content is
11 supplied by someone else?

12 A. In part, yes.

13 Q. The -- is your point that the claim requires both the
14 rules and the content to come from the, quote, data supplier?

15 A. That's one of them, yes, sir.

16 Q. Now, which claims have that requirement?

17 A. I believe the access rule claims, sir. Claim 13 of the
18 '720 patent, sir, and Claim 32 of the '221 patent.

19 Q. So that rule -- I'm sorry, excuse me, that argument
20 doesn't even apply to the '772 claims that are at issue in
21 this case, correct?

22 A. Correct.

23 Q. And that argument is premised on the basis that what Dr.
24 Jones points to as access rules come from Apple, but the
25 content does not, correct?

1 A. That's one of the premises, yes, sir.

2 Q. Now, Dr. Ligler, do you agree that Apple does supply the
3 content users receive?

4 A. It supplies it to Akamai, yes.

5 Q. Apple supplies that content to the user, correct?

6 A. Akamai supplies the content to the user. The content is
7 supplied to Akamai by Apple.

8 Q. Do you agree with the statement that Apple supplies that
9 data to the user?

10 A. In a sense, I do. But the way the system works is that
11 Apple supplies the content to Akamai, and Akamai supplies the
12 content to the user.

13 Q. All right. Dr. Ligler, do you agree with the following
14 statement, and I'll quote: Apple then takes the encrypted
15 file and supplies that data to the user via Akamai?

16 A. Yes.

17 Q. You told me earlier that you've not bought an album.

18 A. That's right.

19 Q. Can you get parental controls on an album, Dr. Ligler?

20 A. I don't know. I presume so.

21 Q. If you buy an album that has 12 songs, one or two of
22 them are explicit, and they come with an explicit song tag,
23 is that a -- is that a possibility or would they all be
24 tagged the same way?

25 A. I don't know.

1 Q. And, Dr. Ligler, let's say you bought an album with
2 explicit lyrics on one or two songs, you didn't want your
3 kids to hear those, okay? You with me so far?

4 A. Yes.

5 Q. And you turned on the parental controls. Are you with
6 me so far?

7 A. I am.

8 Q. When you go and select that album --

9 A. All right.

10 Q. -- does your phone look to see what the controls are for
11 those songs that are part of that album?

12 A. I don't know.

13 Q. You didn't consider that, did you?

14 A. No, I didn't.

15 THE COURT: All right. Ladies and Gentlemen, it's
16 10:00 o'clock. We're going to take a short recess. We'll
17 continue with cross-examination of the witness when we
18 return. You may leave your juror notebooks in your chairs.

19 Don't discuss anything about the case, and we'll
20 have you back in here. This is going to be approximately a
21 10- or 12-minute recess. You're excused at this time.

22 COURT SECURITY OFFICER: All rise for the jury.

23 (Jury out.)

24 THE COURT: All right. Be seated, please.

25 I want to make one thing clear, each party's

1 slides, once they have been shown, are available to the other
2 side on cross-examination. And if there's an objection to
3 the use by one party of another party's slides, such as
4 whether it contains information that would require the Court
5 to be sealed, those objections are to be made by trial
6 counsel at the counsel table. People behind the bar are not
7 going to interfere with the process or lodge objections.

8 Am I understood?

9 All right. We stand in recess for 10 to 12
10 minutes.

11 MR. CALDWELL: Your Honor, very quick question. If
12 the witness is in the middle of cross-examination, is he off
13 limits for --

14 THE COURT: His lawyers can talk to him, and your
15 co-counsel can talk to you.

16 MR. CALDWELL: Thank you.

17 THE COURT: We're in recess.

18 COURT SECURITY OFFICER: All rise.

19 (Recess.)

20 (Jury out.)

21 COURT SECURITY OFFICER: All rise.

22 THE COURT: Be seated, please.

23 All right. Before we bring the jury back in, this
24 morning before we begin today's portion of the trial, I met
25 with counsel in chambers and reviewed objections raised

1 overnight to various issues, most of which were disposed of
2 before coming into the courtroom this morning.

3 However, there was a lengthy group of slides to
4 which the parties had varying disputes and objections.

5 Counsel, this is the group referred to at the
6 bottom of Page 2 and the top of Page 3 of your email chain
7 from last evening. It's also the group which is categorized
8 roughly as being Slides 141 and below, and Slides 159 and
9 higher.

10 It's the group you gave me that begins with the
11 earliest numbered slide being 82 and the latest -- or largest
12 numbered slide being 218. I believe these are D 82 and 218.

13 For the record, having reviewed the same, they're
14 demonstrative in nature. They're subject to
15 cross-examination. And having weighed all the various
16 objections, I don't find that any of them should be
17 precluded. So objections to all this group are denied.

18 All right. Let's bring in the jury, please.

19 COURT SECURITY OFFICER: All rise for the jury.

20 (Jury in.)

21 THE COURT: Please be seated.

22 You may continue, Mr. Caldwell.

23 MR. CALDWELL: Thank you, Your Honor.

24 Q. (By Mr. Caldwell) Dr. Ligler, there's a memory access
25 interface in all the accused devices, correct?

1 A. Yes, sir.

2 Q. And that pulls up the code that implements functions
3 like DRM, parental controls, and rentals, fair?

4 A. I wouldn't say it that way, sir.

5 Q. Well, the memory interface is an interface over which
6 all that information related to digital rights management,
7 parental controls, and rules in the phone is carried around
8 the device -- for example, from the memory to the processor,
9 correct?

10 A. Yes.

11 Q. Now, does Apple refer to mere numbers as rights or
12 rights data?

13 A. I don't know.

14 MR. CALDWELL: Your Honor, I'm going to ask the
15 witness about code, but I don't think I'm going to show it on
16 the screen. He has it in his binder, and I think counsel has
17 it in -- in her binder, so I don't actually think I'll need
18 to seal for that.

19 THE COURT: Then let's proceed.

20 MR. CALDWELL: Thank you.

21 Q. (By Mr. Caldwell) Now, Dr. Ligler, do you have the
22 cross-examination binder in front of you?

23 A. Yes, sir, I do.

24 Q. Will you flip to the code file at Tab 3?

25 A. I'm there, sir.

1 Q. What's the name of that file?

2 A. DRMFileFormat.h.

3 Q. Have you ever reviewed this file before?

4 A. I don't believe so, no.

5 Q. Sir, will you flip to the page of the code file that's
6 Page 14 of 20?

7 A. I'm there, sir.

8 Q. Do you see starting on Line 689, a long list of numbers
9 that Apple's code refers to as sent for Sinf rights data?

10 A. Yes, sir, I do.

11 Q. Was that in a file that Dr. Jones cited, but you did not
12 review?

13 A. I don't know whether -- I don't recall whether Dr. Jones
14 recited it. I did not review it.

15 Q. Dr. Ligler, do you agree that about two-thirds of your
16 income comes from working on patent matters?

17 A. No. Working on intellectual property matters in their
18 entirety, yes.

19 Q. Now, in your direct, you showed us something from the
20 patent. It was towards the end. You showed an -- an excerpt
21 out of the patent, and I believe the colloquy was that Dr.
22 Jones hadn't shown that. Do you remember that?

23 A. I remember saying that that passage had not been
24 discussed, yes.

25 Q. Were you suggesting that he had hidden something from

1 the jury?

2 A. No, sir. I simply said it had not been discussed.

3 Q. And was that text from the claims or the claim
4 construction that the jury has to evaluate?

5 A. No. It was from the specification, sir.

6 Q. Am I correct that you don't dispute for a minute that
7 Dr. Jones is qualified to offer the technical infringement
8 opinions that he's offered in this case?

9 A. He is qualified, as I testified at my deposition.

10 MR. CALDWELL: I will pass the witness, Your Honor.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. FUKUDA:

14 Q. Dr. Ligler, there was some testimony -- you were asked
15 questions about you didn't cite in your report all of the
16 code that was cited in Dr. Jones's report. Do you remember
17 that?

18 A. Yes, I do.

19 Q. Why did you not cite all of the code that Dr. Jones had
20 cited in your report?

21 A. Because I cited the code -- only the code that I needed
22 to rebut Dr. Jones's opinions.

23 Q. And was the code that you had cited in your report
24 sufficient to form your opinions?

25 A. Yes.

1 Q. Do you remember a line of questions from Mr. Caldwell
2 about whether you had formed questions that you had wanted
3 answered from Apple's engineers?

4 A. Yes.

5 Q. Did you receive answers to those questions from the
6 Apple engineers?

7 A. Indirectly, yes.

8 Q. And did you rely on those -- those responses in forming
9 your opinions today?

10 A. Yes.

11 Q. Thank you. Dr. Ligler, there was also a line of
12 questions about use rules and use rule data. You recall
13 that?

14 A. I do.

15 Q. Is the term use rule data in any of the asserted claims?

16 A. Yes. Actually, it's in the final clause of Claim 32 of
17 the '221 patent, I believe.

18 Q. How did -- when you had reviewed Dr. Jones's report,
19 what meaning did Dr. Jones attribute to the term use rule
20 data?

21 A. Well, as I've testified, he treated it synonymously with
22 a use rule.

23 Q. And did he further explain what meaning use rule data
24 ought to have?

25 A. Those things that he identified as use rules, he also

1 identified as use rule data. I believe in his deposition, he
2 indicated that a use rule was a rule or regulation of some
3 sort.

4 Q. And in his deposition, what did Dr. Jones identify the
5 meaning of use rule data to be?

6 A. In his deposition?

7 Q. Yes.

8 A. I'm not sure. In his report, he identified it as
9 synonymous.

10 Q. Okay. And why did you apply Dr. Jones's meaning to use
11 rule data in forming your opinions?

12 A. Because I was rebutting Dr. Jones's opinions.

13 Q. Whose burden is it in a patent infringement case to show
14 infringement?

15 A. The patent owner's. In this case, Smartflash's.

16 Q. And if the Defendants demonstrate that the patent owner
17 has not demonstrated infringement, then what happens?

18 A. Well, then the patents are found not to be infringed.

19 Q. Turning to Mr. Caldwell's chart over here, do you
20 remember -- do you remember these checkmarks that Mr.
21 Caldwell put up on the board?

22 A. Yes, I do.

23 Q. So there's a column under Dr. Ligler, and there's a
24 first row that says reviewed payment code.

25 A. Yes.

1 Q. Dr. Ligler, did you review all of the Apple code that
2 relates to Apple's payment process?

3 A. No, ma'am, I did not.

4 Q. Why did you not review all of the payment code?

5 A. Because I had not been asked to look at the questions
6 of -- related to payment data and payment validation data.
7 That was not an area I was asked to look at and to form
8 opinions about.

9 Q. Will someone else be offering opinions about that?

10 A. My understanding is that Mr. Wechselberger will be doing
11 that.

12 Q. Now, you testified that you did review some code related
13 to payment, earlier?

14 A. Oh, yes.

15 Q. And why -- in what context did you come across some of
16 that code?

17 A. Well, when I begin to look at a code base, as very early
18 on in my analysis, I tend to look throughout the code base,
19 looking at samples of code to get the look and feel, if you
20 will, of -- of what the code is about. And in doing that, I
21 go through various portions of the code that I might not need
22 to look at in detail later; but I'm, again, just trying to
23 get a feel for the code base. That's my standard operating
24 practice. And while doing that, I look through some of the
25 code that would be related to payment.

1 Q. Did you review enough of the code related to payment to
2 form an opinion about the payment-related aspects of these
3 claims?

4 A. No, ma'am, I did not.

5 Q. So Mr. Caldwell's checkmark under Column 1, reviewed
6 payment code, that's not really true, is it?

7 A. In the sense of reviewing it enough to form opinions,
8 it's not really true.

9 Q. Thank you, Dr. Ligler.

10 MS. FUKUDA: Pass the witness.

11 THE COURT: Further cross-examination.

12 MR. CALDWELL: Yes, Your Honor.

13 RECROSS-EXAMINATION

14 BY MR. CALDWELL:

15 Q. So, Dr. Ligler, who did review all the payment code
16 before putting out a report?

17 A. I have no idea, sir.

18 Q. Dr. Jones did, right?

19 A. Oh, I'm sorry. I thought you were talking about Apple's
20 experts. Beg your pardon.

21 Q. You agree Dr. Jones did, correct?

22 A. He reviewed a good portion of payment code, yes.

23 Q. Who on the Apple side reviewed that code?

24 A. I don't know, sir.

25 Q. Would you like me to take the check off by your name?

1 A. If the check implies that I reviewed it enough to form
2 opinions about it, yes, please.

3 Q. Now, we were talking about code that you looked at. You
4 said you -- I think you said something like you reviewed all
5 you felt you needed to review, something along those lines?

6 A. To rebut Dr. Jones's opinions, yes.

7 Q. And, Dr. Ligler, you had not reviewed or cited that Sinf
8 rights code I showed you, correct?

9 A. That's right.

10 Q. You had not reviewed or cited the rental.C code that we
11 put on the overhead, correct?

12 A. That's correct.

13 Q. Dr. Ligler, this is the code that's in your witness
14 exhibit binder, correct?

15 A. In my binder, yes.

16 Q. Dr. Ligler, do you dispute that this is the code Dr.
17 Jones cited for reading use rules and use status?

18 A. I don't know, so --

19 Q. Would you like to check it?

20 A. If you'd like me to.

21 MR. CALDWELL: May I approach the witness, Your
22 Honor?

23 THE COURT: You may.

24 Q. (By Mr. Caldwell) Dr. Ligler, do you dispute that in
25 the first Redweld I gave you is the code Dr. Jones cited for

1 reading use rules and use status for '772, Claims 26 and 32?

2 A. I find this code rather hard to read. I'll take your
3 word for it, sir.

4 Q. Do you dispute that in the second Redweld I gave you is
5 a code Dr. Jones reviewed and cited for evaluating use rules
6 and use status in the '772 claims?

7 A. And when I say hard to read, I meant literally hard to
8 read.

9 THE COURT: That -- that wasn't the question, Dr.
10 Ligler. Limit your responses to the questions that are
11 asked. Okay, sir?

12 THE WITNESS: Yes, sir.

13 A. Do I dispute this? No.

14 Q. (By Mr. Caldwell) And, Dr. Ligler, do you dispute that
15 the third Redweld is the code Dr. Jones cited for the access
16 rule element in '720, Claim 13, and '221, Claim 32?

17 A. No, sir, I do not dispute it.

18 Q. You were redirected on the issue of the definition of
19 use rule relative to use rule data.

20 Do you recall that?

21 A. Yes.

22 Q. And did you explain that Dr. Jones used those
23 synonymously?

24 A. Yes.

25 Q. And in your report, you used them synonymously, too,

1 correct?

2 A. Adopting his assumption, correct.

3 Q. And you had an opportunity in that report to challenge
4 and dispute that assumption, correct?

5 A. Correct.

6 Q. You applied them synonymously, right?

7 A. Yes.

8 MR. CALDWELL: I pass the witness, Your Honor.

9 THE COURT: Further direct?

10 REDIRECT EXAMINATION

11 BY MS. FUKUDA:

12 Q. Dr. Ligler, for your opinions, when you applied use
13 rules and use rules data synonymously for your analysis, what
14 meaning did you apply to both of those terms?

15 MR. CALDWELL: Your Honor, I object. He's admitted
16 he's not applying them in his opinions, and it's outside his
17 report.

18 MS. FUKUDA: I believe that was the same question
19 that Mr. Caldwell asked.

20 THE COURT: I'll allow him to answer the question.

21 Q. (By Ms. Fukuda) When you formed your opinions in your
22 report and you -- you applied Dr. Jones' synonymous meaning
23 for use rules and use rules data, what meaning did -- was --
24 did you apply for both of those terms?

25 A. For both of them, they needed to be a rule or

1 regulation.

2 MS. FUKUDA: May I have those three tabs?

3 Q. (By Ms. Fukuda) Dr. Ligler, Mr. Caldwell waved around a
4 couple of times the three tabs, and he said that these were
5 what you had cited in your opinions in your report.

6 Do you recall that?

7 A. I do.

8 Q. Does this constitute all of the source code that you
9 have reviewed?

10 A. By no means.

11 Q. Why did you include this portion of the code that you
12 had reviewed?

13 A. Because that portion contained the header files and data
14 definitions for things that Dr. Jones had identified as use
15 rules and access rules.

16 Q. And was what you had cited here sufficient to form your
17 opinions of non-infringement --

18 A. Yes.

19 Q. -- with respect to those terms?

20 A. Yes.

21 Q. Thank you, Dr. Ligler.

22 THE COURT: Further cross-examination?

23 MR. CALDWELL: No, sir, Your Honor.

24 THE COURT: All right. You may step down,
25 Dr. Ligler.

1 THE WITNESS: Thank you, sir.

2 THE COURT: Defendants, call your next witness.

3 MR. BATCHELDER: Apple calls Dr. Anthony
4 Wechselberger.

5 THE COURT: All right.

6 MS. FUKUDA: Your Honor, I apologize. Could we
7 have permission to release Dr. Ligler?

8 THE COURT: Is there objection from the Plaintiff?

9 MR. CALDWELL: No objection, Your Honor.

10 THE COURT: All right. You're released,
11 Dr. Ligler.

12 The new witness will come forward and be sworn by
13 the Courtroom Deputy.

14 (Witness sworn.)

15 THE COURT: Please have a seat on the witness
16 stand.

17 ANTHONY WECHSELBERGER, DEFENDANT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. BATCHELDER:

20 Q. Good morning, sir.

21 A. Good morning.

22 Q. Would you please introduce yourself to the jury?

23 A. Good morning. My name is Anthony Wechselberger.

24 Q. And what do you do for a living, sir?

25 A. I'm a technology consultant, and I provide system and

1 engineering services to the industry, and I assist in
2 legal -- the legal community as I'm doing today.

3 Most of my work -- technical work revolves around
4 systems and equipment that distributes multimedia
5 information, and I've been doing this kind of work for about
6 35 years.

7 Q. What do you do when you're not working?

8 A. Well, I'm married. And between my wife and myself, we
9 have 6 kids and 12 grandkids; and that keeps us pretty busy.
10 We live in Southern California. We like the outdoors.
11 Nancy and I spend a lot of time in the deserts and mountains
12 out there.

13 Q. Why are you here today, sir?

14 A. I've been asked to provide opinions on the issues of
15 infringement; that is, whether or not the accused products
16 infringe the Smartflash patents.

17 I've also been asked to provide my opinions on the
18 validity of the asserted patent.

19 Q. What did you study in school?

20 A. I have a Bachelor of Science degree in electrical
21 engineering from the University of Arizona. That's 1974.
22 I have a Master's degree in electrical engineering conferred
23 by the San Diego State University, 1979.

24 I'm also a graduate of the executive program for
25 scientists and engineers. That's conferred from the

1 University of California at San Diego. That was 1984.

2 Q. And even outside of school, what work have you done
3 related to the technologies involved in this case?

4 A. For virtually all of my professional career, I've been
5 involved in communications systems. Through the decade of
6 the '80s and '90s, I was executive vice president and chief
7 technology officer at a couple of companies that produced
8 systems and equipment for television broadcasting
9 applications, cable TV, and satellite broadcasting
10 applications.

11 When I started my consulting company in 1999 and worked
12 for myself, I continued in that area and expanding into areas
13 of all kinds of multimedia distribution, including newer
14 technologies, such as those use in the Internet and wireless
15 spaces.

16 Q. All right, sir. And have you given talks and
17 presentations in this space, publications?

18 A. Yes. Many panel presentations. I've authored magazine
19 articles, approximately 30 over the years.

20 Q. Do you have any patents in this area?

21 A. Yes. I'm the named inventor on two patents, both of
22 which have to do with the control and management of
23 information and communications systems, mostly entertainment
24 types of information.

25 Q. And what types of engineering work do you do?

1 A. In the industry, I -- most of my clients are clients
2 that are involved in distributing content. Those clients
3 would be rights owners or content owners, such as networks or
4 studios.

5 And those networks typically would tend to connect
6 content providers with content consumers, such as people or
7 industrial applications.

8 For example, for the past -- more than a decade, I've
9 been involved with the six Hollywood studios, the six
10 Hollywood studios. I'm under contract to them currently,
11 still am, as their chief securities systems architect for
12 their digital cinema initiative.

13 And this is the transition from 35-millimeter film to
14 digital files for theatrical distribution. In that capacity,
15 I'm responsible for their DRM or security infrastructure in
16 that system, and I represent them at the -- at the SMPTE,
17 Society of Motion Picture and Television Engineers, where I
18 am the -- I guess you could call it the chief evangelist for
19 global system specification for digital cinema.

20 Q. And so by content, you're referring to stuff like
21 movies, music, that sort of thing?

22 A. Yes. Virtually any kind of information that can be
23 represented digitally: Songs, books, movies, television
24 shows.

25 Q. And what kind of legal consulting do you do?

1 A. That falls into two buckets.

2 One bucket would be providing expert witness services,
3 such as I'm doing here today.

4 The other bucket has me come in as a technologist and
5 basically a teacher to help folks understand the technology
6 of a patent or whatever is at issue.

7 Q. And have you served before as an expert witness in the
8 areas of content distribution and protection?

9 A. Yes. I've given oral testimony approximately a dozen
10 times in depositions or at trial. And in terms of formal
11 submitted expert reports, about twice that many.

12 MR. BATCHELDER: Your Honor, I'd like to offer
13 Mr. Wechselberger as an expert in the area of digital content
14 distribution and protection.

15 THE COURT: Is there objection?

16 MR. CALDWELL: No, Your Honor.

17 THE COURT: Mr. Wechselberger will be acknowledged
18 by the Court as an expert in those fields.

19 Proceed.

20 Q. (By Mr. Batchelder) Have you prepared slides explaining
21 your analysis and conclusions, sir?

22 A. Yes, I have.

23 Q. All right. Can you summarize your opinions in this
24 case, please?

25 A. Yes.

1 Q. And what's your first opinion?

2 A. My first opinion is that all of the asserted Smartflash
3 claims are not infringed by the accused Apple products.

4 Q. And your next opinion?

5 A. My next opinion is on the issue of validity, and I've
6 concluded that all of the asserted claims are invalid in
7 light of what's called prior art.

8 Q. And your third opinion?

9 A. Third opinion has to do with Patent No. '772, Claim 26,
10 where I've concluded that claim is invalid for lack of a
11 proper written description.

12 Q. And in your understanding, sir, what are the differences
13 between a non-infringement analysis and an invalidity
14 analysis?

15 A. Sure. In an infringement analysis, the question of
16 infringement, the accused products have to be examined for
17 the way they operate and their features and compared against
18 the asserted claims. If every one of the claim requirements
19 is not found in the accused product, there is no
20 infringement.

21 Q. And what did you do to evaluate whether Apple's products
22 practice Smartflash's claims?

23 A. I studied -- excuse me, I studied the accused products
24 and I learned how they work and all their features. I did
25 this by reviewing documentation that was provided to me.

1 The deposition transcript -- transcripts of the Apple
2 witnesses was very helpful, including all the exhibits
3 associated with that. Of course, I studied the claims and
4 the patents that were being asserted. I took into account
5 the Court's claim construction rulings because that's
6 important to understand claim meaning. And I also read the
7 expert report from Smartflash's expert.

8 Q. That's Dr. Jones?

9 A. Yes.

10 Q. And did you review the testimony of any of the Apple
11 engineers who testified here: Mr. Mirrashidi, Mr. Muller,
12 Mr. Farrugia?

13 A. Yes, all of them.

14 Q. Were you here in court when those Apple engineers
15 testified?

16 A. Yes, I was.

17 Q. They say anything that was inconsistent with your
18 understanding coming in?

19 A. No, they did not.

20 Q. What did you do to evaluate whether the asserted patent
21 claims are invalid?

22 A. So there again, I, of course, examined the Smartflash
23 patents, the claims, and the Court's construction which help
24 us to understand the meaning and scope of the claims.

25 I reviewed what are -- what's called the prosecution

1 history of those files, Dr. Jones's expert report, and the
2 prior art, of course, which I'll be talking about today which
3 invalidates those patent -- those claims.

4 Q. Are you being paid for your time spent working on this
5 matter?

6 A. Yes. My standard consulting rate currently is \$325 an
7 hour, and that's what I'm charging here.

8 Q. How did you approach preparing your expert report and
9 other materials in this case?

10 A. My standard technique, which is the same one I applied
11 here, is to do my investigation. And when it came time to
12 document my findings, I documented my report, my findings,
13 and I documented the basis of those findings.

14 And in terms of the rigors of putting together the
15 formal report, I solicited both my typewriter and the help of
16 the -- the lawyers -- the lawyers at Ropes & Gray to help
17 with the typing.

18 Q. Why didn't you do all the typing yourself?

19 A. The reports -- more than one that was submitted,
20 hundreds of pages in all. I'm not the best or fastest
21 typer -- typist or the most accurate. And the important
22 thing is that the opinions and the basis of those are mine,
23 and that's mine in the report. I own that.

24 Q. Earlier were you in the courtroom when Dr. Ligler
25 testified about non-infringement this morning?

1 A. Yes, sir, I was.

2 Q. And yesterday, too?

3 A. Yes.

4 Q. And how do your opinions compare to his?

5 A. I am going to provide opinions on the same asserted
6 claims. As you heard, he -- Dr. Ligler was focusing on the
7 access rules and use rules parameters in the claims. I
8 looked at the same claims with respect to the requirements
9 for payment information.

10 Q. All right. Were -- were you in the courtroom when Dr.
11 Jones testified about these payment elements?

12 A. Yes, sir, I was.

13 Q. And do you agree with Dr. Jones?

14 A. I do not agree with Dr. Jones.

15 Q. All right. Can you summarize for the jury your opinions
16 in that regard?

17 A. I indicated I was going to make opinions about payment
18 information, and the two specific types of payment
19 information that are important are shown here.

20 In my opinion, Dr. Jones has not identified payment data
21 or payment validation data in the accused products in the way
22 that they are required in the claims under the Court's
23 construction.

24 Q. All right. Let's look at Slide 3. Can you remind us
25 all what Dr. Jones identified as payment data?

1 A. Sure. In the upper left-hand corner of this slide are
2 the three identifiers that we've now seen several times, the
3 DSID, GUID -- I heard it called the GUID yesterday -- and a
4 machine ID.

5 Q. And those all end in ID?

6 A. Yes, sir.

7 Q. That stands for?

8 A. Identifier.

9 Q. Okay. And so Dr. Jones identified that as payment data,
10 those identifiers?

11 A. Yes, he did.

12 Q. And what has the Court told us that payment data must
13 be?

14 A. On the right-hand side in blue is the Court's
15 construction. The Court has instructed that payment data is
16 data that can be used to make payment for content.

17 Q. And what's that red symbol you've got in the middle
18 there?

19 A. That's an equal sign with a slash through it. That's a
20 way of saying that what Dr. Jones says is payment data is not
21 payment data.

22 Q. You were here to see Mr. Mirrashidi testify yesterday?

23 A. Yes, sir, I was.

24 Q. Can you remind us what Mr. Mirrashidi said about what
25 happens when a user buys content in iTunes?

1 A. Sure. In the next slide, I have a diagram of that. And
2 this is a --

3 Q. What does this reflect?

4 A. This is a picture. Shows the Apple terminal at the
5 lower bottom. That's a user device. And you see the circle
6 with information package. That is called a buy request. And
7 the parameters across the top is the information that was
8 within the information package when a buy request is
9 initiated by a consumer wishing to download content.

10 Q. All right. And which of these does Dr. Jones say are
11 payment data?

12 A. So with a click --

13 THE WITNESS: Thank you.

14 A. -- I've drawn a red box around those three identifiers,
15 DSID, GUID, and MID, and that is what Dr. Jones is pointing
16 to among the parameters in that information package as
17 representing payment data.

18 Q. (By Mr. Batchelder) All right. And, sir, are those
19 identifiers payment data?

20 A. They are not.

21 Q. What do they do?

22 A. Next slide, please?

23 Q. What -- what do they do, sir?

24 A. They -- they -- they identify particular pieces of
25 information that transit between the user device -- the Apple

1 user device and the Apple servers.

2 Q. All right. Let's go to this next slide. What do the
3 Smartflash claims require about payment data?

4 A. So on the left part of this slide, I have a picture of
5 the Smartflash claim requirements; and as it says at the top
6 under the red words: Payment data must be read from the user
7 device and sent to a payment validation system. So the
8 Smartflash user device is shown down here at the bottom.

9 They call that a data access terminal or a -- with a
10 data carrier or also a data access device. But that --
11 there's a Smartflash user terminal. You see payment data
12 then coming from that terminal up to the payment validation
13 system as required by the claim.

14 Q. All right. And does that ever happen in Apple's
15 products?

16 A. This does not -- Apple's products do not function this
17 way. No, it does not happen.

18 Q. And what happens -- what happens in Apple's products?

19 A. I can show that on the right-hand side of this slide.

20 Q. And what are you showing here, sir?

21 A. We have the Apple user device in the bottom. We see the
22 information package, which I identified in the previous slide
23 with the three identifiers in it, DSID, GUID, MID. And that
24 information package then goes to the Apple server at the
25 beginning of a purchase request for content to be downloaded.

1 Q. All right. And then what happens next in Apple's
2 system?

3 A. We see what happens as a result of that. I've added the
4 animation that shows if there is a payment process to take
5 place, that information associated with the user's account up
6 at the Apple server then transits over to a financial
7 institution that can take charge of the financial process
8 that's associated when something has to be purchased.

9 Q. Now, that credit card number that you've depicted at the
10 top on the Apple side, that is payment data?

11 A. Yes, sir, that is payment data at that point.

12 Q. Okay. And where does that get stored?

13 A. That is stored up here at the Apple server. You see the
14 user account information there at the Apple server, so that's
15 where it exists.

16 Q. All right. Is there an advantage to storing that
17 payment data on the server, as opposed to storing it down
18 lower on the user's device?

19 A. You bet. Payment data, obviously, would be sensitive
20 information. Consumers' financial information would be
21 sensitive. And by putting that payment data up in the Apple
22 server area, it's been removed from the high-threat
23 environment associated with where the user owns and controls
24 their user device.

25 And so what you avoid in this design is sensitive

1 information, such as payment data, going back and forth
2 through the communications infrastructure. It never happens.

3 And so the system is fundamentally more secure by
4 putting that up where the information is safe at the Apple
5 servers.

6 Q. Now, let me ask you, sir, do you and Dr. Jones --
7 focusing on the information package down in the lower right
8 there, do you and Dr. Jones have any dispute about whether
9 those three IDs get sent to the Apple server?

10 A. No dispute whatsoever.

11 Q. Do Apple engineers say that happens?

12 A. Yes, sir.

13 Q. Dr. Jones says it happens?

14 A. Yes.

15 Q. Do you need to read source code to figure out whether
16 that happens?

17 A. I do not. I -- my review of the deposition testimony
18 and now the court testimony, there's no disagreement here at
19 all about whether or not those three parameters exist and
20 that they go from the Apple user device up to the Apple
21 server.

22 Q. Okay. And what does Dr. Jones say is the data carrier
23 in Apple's devices?

24 A. Dr. Jones points to the memory inside the user device as
25 being the Smartflash data carrier.

1 Q. And does payment data come from memory in the user
2 device on the Apple side?

3 A. No, sir. There's no payment data in the Apple user
4 device.

5 Q. And why isn't the information sent from Apple's devices,
6 payment data?

7 A. Well, as we can see, it's up at the Apple server where
8 it exists, but I also have an additional slide that helps us
9 visualize that.

10 Q. Okay. And what does this show?

11 A. This shows two use cases for when a consumer would
12 attempt to download -- request and download content.

13 On the left is the use case where the Apple user would
14 be requesting content with no associated price. And on the
15 right, a use case where the Apple consumer would be
16 requesting content that does have a price and --

17 Q. And -- and how does what gets sent to the server from
18 the Apple's user device, how does that compare across those
19 two scenarios?

20 A. Well, as you can see visually, on the left, the same
21 three identifier parameters are shown in the information
22 package as is on the right.

23 And this being two use cases, one for content with no price,
24 the other content with a price, virtually, identical
25 information is sent in both cases.

1 Q. All right. And so is that information package payment
2 data?

3 A. I'm sorry. I couldn't hear you.

4 Q. Is that information package payment data, sir?

5 A. Absolutely not.

6 Q. Now, what was the second reason you disagreed with Dr.
7 Jones?

8 A. Second reason --

9 THE WITNESS: Thank you.

10 A. -- is shown on the lower part of this slide. He accuses
11 payment validation data requirement of the asserted claims as
12 being this collection of five parameters.

13 Q. (By Mr. Batchelder) Can you just read them into the
14 record so we're clear?

15 A. Yes. The Sinf, the Pinf, dpInfo, download URL, and
16 download key.

17 Q. All right. And what did the Court tell us about payment
18 validation data and what it means?

19 A. With the Court's construction order, he instructed us to
20 apply the plain meaning.

21 Q. And what is that plain meaning in your understanding?

22 A. Plain meaning in my understanding would be data that can
23 validate that payment has been made.

24 Q. So why do you disagree with Dr. Jones about what he
25 accuses as payment validation data?

1 A. Because under that meaning, the plain meaning I just
2 provided, none of these -- singularly or collectively, none
3 of this information that comes down from the active server
4 has anything to do with payment validation.

5 Q. All right. What are you showing on this next Slide 8,
6 sir?

7 A. So this slide takes us now to the second half of a
8 download tran -- transaction. Again, we have the Apple user
9 device at the bottom and the Apple server in the middle, at
10 the top. Same two use cases: Content being requested with
11 no price; content being requested with a price.

12 And we see in the dotted bubbles on both sides the five
13 parameters that I just identified. And this is essentially
14 the mirror image of the upload information that we just
15 looked at, but now we're looking at the information coming
16 back down from the Apple server, which, to meet the claim
17 requirements, has to be payment validation data.

18 None of the parameters shown for either use case is related
19 to payment, payment validation, or even, as you can see,
20 whether content is free or not.

21 Q. And is -- is it the same information that comes down or
22 different?

23 A. It's identical information under both use cases.

24 Q. And to be clear, on the left side, when you talk about
25 Apple user requesting content with no price, has any payment

1 been made there?

2 A. With no price, no payment.

3 Q. And why is that important?

4 A. It's important because Dr. Jones has pointed to these
5 five parameters and said that's payment validation data, and
6 it's illogical to -- to accept his opinion when we're dealing
7 with content that has no price.

8 Q. All right. Mr. Mirrashidi -- Mr. Mirrashidi explained
9 something about sessions within Apple's system, correct?

10 A. Yes.

11 Q. What does this slide show, sir?

12 A. So it helps us to understand the notion of a session,
13 session being a period of time across which certain
14 transactions are allowed to take place.

15 Session has an opening and a closing, and it's represented
16 here as a -- as hours. A session will automatically close
17 after 84 hours.

18 So we have here an open session that -- within which then
19 consumers can make content selections for download, and we
20 can -- this will be animated in a moment, and we can see some
21 things that happen.

22 Q. Okay. Should I click?

23 A. Yes, please.

24 Q. All right. What have you done there?

25 A. So we're at the opening -- or the beginning of the

1 session, and the consumer in this -- this picture has --
2 excuse me -- requested a download of the song Heartbreak
3 Hotel. That song costs \$1.29.

4 We see a line going up vertically and terminates in what's
5 called a buy request. That's what they call the transaction
6 message that takes that information that goes up to the Apple
7 server.

8 And once that information in that dotted blue box has been
9 processed by the Apple server, a download response is
10 generated, and that contains those five other parameters that
11 we looked at. In response, along comes the content down to
12 the consumer. So this is a single song request, download
13 transaction.

14 Q. All right. And, sir, let me pause and just ask, the buy
15 request that goes up and the download response that goes
16 down, as you're indicating there, is there any dispute
17 between you and Dr. Jones about whether that happens?

18 A. No. It happens just -- just as I've shown. And from
19 what I have read and understand about his opinion, we are in
20 agreement that far.

21 Q. And the Apple engineers, what do they say about that?

22 A. Their testimony is the basis of my opinions here.
23 That's what they say happens.

24 Q. Okay, sir. Everybody agrees on the facts?

25 A. Yes, sir.

1 Q. All right. So should I click to see what happens next?

2 A. Just a quick point to the cash register over here at the
3 \$1.29 on the left, that started out at zero, and we've just
4 purchased a song, so that's now going to say \$1.29. And as
5 we continue with the purchase, we'll see that accumulate.
6 There's a series of purchases now happening. I think the
7 total is eight or nine songs, some twice at the same time.
8 And we now see the cash register has a total of \$10.41.

9 We also may have noticed that the session, red bar, came in
10 from 84 to about 60 hours. And the reason that happened is
11 that the total went over \$9.90, and the Apple session rules
12 or processes, if you will, have been established so that the
13 session closes when the accumulated cost goes over \$9.90.

14 Q. Okay. So let's come back to that -- the first purple
15 circle on the left that has the apple with the music notation
16 in it. When the user receives that content, has payment
17 happened?

18 A. Not at all.

19 Q. And there's a blue box over that called download
20 response, correct?

21 A. Yes.

22 Q. All right. And that yellow arrow, you're indicating
23 what there?

24 A. On both of those yellow arrows, accused of being payment
25 data, accused of being payment validation data, those are the

1 information packages that Dr. Jones is pointing to for those
2 claim requirements.

3 Q. So for that first Apple song, is the information in that
4 blue box payment validation data?

5 A. No. There's been no payment whatsoever at this point.

6 Q. And what about all the way at the end of the session?

7 Ultimately, there may be payment, correct?

8 A. Ultimately, yes. Nobody's saying that the Apple system
9 doesn't charge for content. There will be payment.

10 Q. And so what about the -- the next blue box after that?
11 Would that be payment validation data?

12 A. The one after the red bar at the close?

13 Q. Right.

14 A. No, none of the down -- none of those download blue
15 responses are payment validation data.

16 Q. How does the download response information to the far
17 right compare with the download response information to the
18 far left?

19 A. The information is all identical.

20 Q. And does any of it reflect that payment has been made?

21 A. No, sir. And the important -- an important takeaway
22 from the slide is that each of these download responses is
23 coming back down to the Apple user device in all situations,
24 but there's no information in that box related to payment
25 being made or payment being validated.

1 Q. All right. Sir, let's move to your next slide. How
2 does all this relate to the claims?

3 A. So this slide shows '720, Claim 13, and I've highlighted
4 and underlined those terms in the claim elements that require
5 payment data. And if you'll click one, we can get a better
6 view of those.

7 Q. Before I do that, sir, could I just ask you what those
8 gray Xs are?

9 A. Sure. Prior to my testimony today, we heard from Dr.
10 Ligler, and he provided testimony as to why certain claim
11 elements don't infringe the access rules or use rules
12 information. And he earlier today checked off these two
13 claim elements as being non-infringed.

14 Q. Okay. So that's what those gray Xs are?

15 A. Yes.

16 Q. All right. And then you focused on the ones that we've
17 just highlighted, the -- the ones that have payment data or
18 payment validation data?

19 A. That's correct. There are five claim elements with
20 payment data and payment validation data.

21 Q. And what should we do as to those yellow elements?

22 A. Well, as it says in the upper left portion of this
23 slide, the accused features are not payment data. They are
24 not payment validation data. So we should put a red X over
25 those five boxes next to the yellow highlighted elements.

1 Q. Does Apple infringe this claim, sir?

2 A. No, sir.

3 Q. How many Xs would you need not to infringe?

4 A. You only need one.

5 Q. How many you got?

6 A. I have five -- excuse me. Dr. Ligler offers two more
7 for a total of seven reasons why this claim does not
8 infringe.

9 Q. Now, let's take a look at the next one, '221 patent,
10 Claim 32. How does all this relate to this claim?

11 A. Similar situation here. You see the X -- the gray X
12 from Dr. Ligler's earlier testimony, and I will highlight the
13 payment data and payment validation data elements. And we
14 have four of them on this particular claim. And for the same
15 reasons, these claim elements are not infringed. They should
16 get red Xs, as well.

17 Q. Like that?

18 A. Yes, sir.

19 Q. All right. Should we move on to the next claim, sir?

20 A. Uh-huh, yes.

21 THE COURT: You need --

22 Q. (By Mr. Batchelder) What are we looking at here?

23 THE COURT: -- you need to -- excuse me, you'll
24 need to answer verbally.

25 THE WITNESS: Yes, Your Honor.

1 THE COURT: "Uh-huh" won't work.

2 THE WITNESS: Sorry.

3 THE COURT: All right. Let's proceed.

4 Q. (By Mr. Batchelder) What are we looking at here, sir,
5 which claim?

6 A. This is '772, Claim 26. And since there's so many
7 elements and they're difficult to read, I've arranged to blow
8 up the elements so we can see them.

9 Q. Okay. And you've got gray Xs at the bottom. What are
10 those?

11 A. Those are two claim elements that Dr. Ligler -- Ligler
12 testified to that are not infringed because of the parameters
13 he looked at.

14 Q. And you're focused on what?

15 A. Payment data and payment validation data.

16 Q. Okay. So you've highlighted those elements?

17 A. Yes, highlighted those. They don't exist in the
18 claim -- I'm sorry, they don't exist in the Apple system as
19 required in the claim. So three more Xs.

20 Q. Like that?

21 A. Yes, sir.

22 Q. Does Apple infringe this claim, sir?

23 A. No.

24 Q. Again, how many Xs do you show here, sir?

25 A. Three.

1 Q. How many do you need to show you don't infringe?

2 A. Only one.

3 Q. Let's move to the next one. This is which claim, sir?

4 A. '772, Claim 32.

5 Q. And you've got two more gray Xs. Those reflect what?

6 A. Those are from Dr. Ligler's testimony.

7 Q. And you're going to focus on which ones?

8 A. Three claim elements shown in yellow. Again, the same
9 underlined payment data, payment validation terms, and same
10 conclusion, three red Xs.

11 Q. Like that?

12 A. Yeah.

13 Q. Does Apple infringe this claim, sir?

14 A. No, sir.

15 Q. Have we now been through all four asserted claims?

16 A. Yes.

17 Q. In sum, what is your opinion of whether Apple infringes
18 the asserted claims in this case?

19 A. There are four asserted claims in this case. The Apple
20 products do not infringe any of them.

21 Q. What did you indicate with that blue checkmark, sir?

22 A. We've satisfied the question of infringement. There is
23 no infringement.

24 Q. All right. Remind us of your second opinion.

25 A. This is the issue of validity of the asserted patents,

1 whether they're valid in light of the prior art.

2 Q. And what is prior art?

3 A. Prior art is information that exists prior to the
4 priority date of a patent. In this case, the Smartflash
5 priority date is -- is October 25th, 1999. And so prior art
6 that would be ahead of that date and time and available to
7 people of ordinary skill.

8 Examples would be patents, textbooks, magazine articles.
9 Any kinds of information that's available to the person of
10 ordinary skill and can be combined with the knowledge of that
11 person of ordinary skill, can be used to show that a claim is
12 not valid.

13 Q. And what is meant by a person of ordinary skill in the
14 art?

15 A. I have a slide that speaks to that. And this is -- is a
16 result of my investigation and work on -- on this project.

17 What I concluded would be a person of ordinary skill,
18 and that is a person of or -- of ordinary skill in the art
19 would be -- I'm sorry, would have at least a Bachelor of
20 Science degree in electrical engineering, computer science,
21 or a telecommunications-related field, so that's academics.

22 And in terms of industry experience, at least three
23 years of industry experience that included client-server
24 data/information distribution and management architectures.

25 Q. And did you have the qualifications of a person of

1 ordinary skill as of the Smartflash priority date?

2 A. I did.

3 Q. Let's move to Slide 16. How would you describe the
4 technology covered by the asserted claims in this case, sir?

5 A. I thought it would be helpful, before we dive into some
6 of the details of the prior art, to help people understand
7 what these patents in the field of art is all about and how
8 it could be considered in a simple way to think about it.

9 And in my opinion, they would be -- these patents are
10 about paying for access to protected content in an electronic
11 distribution system.

12 Q. All right. And in an electronic distribution system,
13 what types of components would you like to discuss?

14 THE WITNESS: Next slide, please?

15 A. So systems that we'll be looking at have ways of moving
16 information around, and they have processing elements that
17 manage and -- and work with this information. And what I'm
18 calling components on this slide are representations of the
19 kinds of physical devices that would do this processing or --
20 and then architecture.

21 And starting -- excuse me, I'll just go clockwise
22 around.

23 Smart cards. Smart cards have been around since the
24 very early 1980s. If you have one of the newer credit cards
25 that has a chip on it, I think we call those chip cards,

1 that's a smart card. But they -- they are small devices that
2 have memory and a little bit of processing capability, but
3 they're not new.

4 Q. And what's the next one?

5 A. The next one, general purpose computers, standard
6 desktop computer, nothing special, just a PC.

7 Q. Next?

8 A. Next, the communications interfaces and wireless
9 communications. As I mentioned, these systems will move data
10 around to the various components, and that takes interfaces
11 to move data in and out of components and communications. In
12 particular, wireless communication is a characteristic of
13 some of the asserted claims is the point here, so there's
14 nothing new about wireless.

15 Q. And the next one?

16 A. Keeping going, mobile devices, think laptop or a cell
17 phone, something portable and like -- small like that.

18 Q. And the next one?

19 A. Last one, memory is a characteristic of the claims we'll
20 be looking at. And I've shown here a small memory component.
21 You might think of a card that you insert into a digital
22 camera, for example.

23 Q. All right. Let's take a look at Slide 18. What are you
24 comparing here?

25 A. So on the left are the prior art components that I'm

1 just giving a quick review of. And on the right, the same
2 components in the Smartflash patent architecture exist. The
3 statement is that there's nothing special about the
4 implementation of the Smartflash system. It's all based upon
5 well-known standard components that were available in the
6 industry at the time.

7 Q. Why did you put the prior art components on the left,
8 sir?

9 A. To emphasize that prior art comes ahead of the
10 Smartflash patent. It was there already.

11 Q. All right. Were you here in the courtroom when Mr. Racz
12 testified?

13 A. Yes, I was.

14 Q. And what did Mr. Racz say about these components?

15 A. He had several things to say when asked about those.
16 And I've got some citations.

17 Q. All right. In Slide 19, what did he say?

18 A. He said, when asked about smart cards, that he did not
19 invent smart cards. He said he did not invent memory. He
20 did not invent general purpose computers. He did not invent
21 mobile devices. He did not invent communication interfaces
22 or wireless communication.

23 Q. All right. Let's look at Slide 20. What are you
24 depicting here from what you call the Smartflash system?

25 A. This is Figure 4A from the Smartflash patent, and also

1 in the box on the lower left is Figure 1A from the same
2 Smartflash patent. And this is an overview of the main
3 components in the Smartflash architecture, and it shows some
4 of the communications paths between these components.

5 Q. All right. What does Box 80 do that is colored purple?

6 A. So I'm going to describe the boxes in this, and I'm
7 going to color code them as we go so we can keep track of
8 that.

9 The specification calls D.S. a data supplier. That's a
10 data provider, a sort of content.

11 Q. And the items you've just colored red, the T and the
12 Figure 1?

13 A. Yes. Elements associated with the user location, I'm
14 going to color code red. There are three components in the
15 Smartflash architecture associated with a consumer's
16 location.

17 T is a terminal device. 30, the small box, is a data
18 carrier. It's a memory device. And the consumer player
19 device or rendering device is called a data access device in
20 this system, and that's shown in Figure 1A.

21 Q. All right. And what is Box 60 that you've just colored
22 yellow, S.P.?

23 A. Okay. The S.P. is called a service provider, and you
24 can think about -- you can see that it's sort of in the
25 middle of the -- of the arrangement connecting to all the

1 other boxes.

2 It has different functions depending upon different --
3 on different ways, different embodiments in -- in the system.

4 But you can think about that as a system manager or the
5 central authority or perhaps a storefront.

6 Q. All right. And then finally what is the green box, 70,
7 P.V.A.?

8 A. P.V.A. stands for payment validation authority. And so
9 it's green for money, and a lot of what we'll be talking
10 about has to do with making payment for content, and that
11 function is responsible for doing that.

12 Q. All right. And do these same two figures, Figure 4 and
13 Figure 1A, do they appear in all of the asserted Smartflash
14 patents?

15 A. That's correct. The Smartflash drawings are the same
16 across all of the asserted patents.

17 Q. All right. And what does Mr. Racz say about whether he
18 invented the functions depicted here?

19 THE WITNESS: Next slide, please.

20 A. He said he did not invent transmitting digital content
21 or downloading content over the Internet.

22 Q. (By Mr. Batchelder) Okay. And what did he say about
23 online-related information?

24 A. He said he did not invent online sale of content, online
25 payment for content, payment validation data, or use rules in

1 connection with the online sale of content.

2 Q. And what did he say about DRM?

3 A. He said he did not invite (sic) digital rights
4 management, DRM, or DRM in connection with online sales of
5 content.

6 Q. He did not invent that?

7 A. He did not.

8 Q. And what did he say about display?

9 A. He said he did not invent displaying to the user whether
10 access is permitted.

11 Q. MP3 player?

12 A. Said he didn't invent that.

13 Q. Online rental?

14 A. Said he did not invent online rental of content or
15 charging different prices for online rental versus online
16 purchases.

17 Q. All right, sir. And what are you depicting here in
18 Slide 27?

19 A. So wrapping up that introduction to components and
20 processes and functions, these fundamental components and
21 concepts are all in the prior art.

22 Q. And do you have some examples from the prior art that
23 you'd like to show the jury?

24 A. Yes.

25 Q. What are you depicting on this timeline?

1 A. So the timeline goes from 1994 out to 1999; and,
2 importantly, is the Smartflash priority date shown in October
3 25th of 1999.

4 And the prior art references that I'll be discussing are
5 all in front of the Smartflash date and time. And the one in
6 bold there, says Gruse/IBM, is the first one I'd like to talk
7 about.

8 Q. Okay. What are you depicting here on Slide 29, sir?

9 A. This is Defendant's Exhibit 23, and it's the title page
10 of a United States patent. The title is: System for
11 tracking end-user electronic content usage. It's assigned to
12 IBM or International Business Machines.

13 The inventors -- first named inventor is Mr. George
14 Gruse, and it has a priority date of October 22, 1998.

15 Q. And how does that date compare to the Smartflash
16 priority date?

17 A. This is one year -- more than a year ahead of
18 Smartflash.

19 Q. Have you analyzed this IBM patent?

20 A. I did.

21 Q. And what challenges did this IBM patent from Mr. Gruse
22 seek to address?

23 A. So on the next slide, I've gone to the opening of the
24 IBM/Gruse patent, and most patents will have a brief
25 discussion or introduction to what they're all about.

1 And citing from Column 1, Line 65 through Column 2, Line
2 5, the Gruse patent explains that one reason that owners are
3 afraid of unauthorized copying or pirating of digital
4 content.

5 And another citation comes from the same patent, Column
6 2, Lines 23 through 31 where it's explained that the Internet
7 makes it relatively easy to pirate and distribute
8 unauthorized copies.

9 And, therefore, a need exists to ensure protection and
10 security of digital assets dis -- distributed electronically.

11 Q. All right. How does that compare to the challenges that
12 Smartflash later said it was addressing?

13 A. We can look at the opening of the Smartflash patent on
14 the next slide.

15 Q. What do you have on the left, sir?

16 A. What I have on the left are the citations that I just
17 provided about the IBM patent. And on the right, I have
18 citations from the Smartflash patent.

19 At the top of the '720 patent, Lines 1 -- or Column 1,
20 Lines 15 through 19, the Smartflash patent explains that
21 there is an increasingly wide use of the Internet as a
22 growing prevalence -- to be responsible for a growing
23 prevalence of so-called data pirates. I'm paraphrasing.

24 Also indicates that content is being accessed without
25 authorization through unauthorized websites.

1 I've now moved to the second box, Column 1, Line 23
2 through 31, and finalizing by saying: There's an urgent need
3 to find a way to address the problem of data piracy.

4 Q. So as between these two patents, the IBM patent that
5 came earlier and the Smartflash patent that came later, who
6 recognized this problem first?

7 A. Obviously, IBM and Mr. Gruse at IBM were onto this a
8 year ahead of Smartflash.

9 Q. All right. In the IBM patent, what was the role of
10 usage conditions in addressing these challenges?

11 A. Sure.

12 On the next -- excuse me -- on the next slide, the
13 IBM/Gruse patent developed a process for managing control
14 over content through what they call use conditions.

15 And at Column 28, Lines 39 through 42 at the top we --
16 our -- we are given examples of store usage conditions. When
17 it says "store," they're talking about an electronic store
18 where you might go to purchase electronic content.

19 An example would be getting a song that could be played
20 a defined number of times.

21 The table in the middle is an example of the kinds of
22 usage conditions that the IBM/Gruse patent provides or
23 discloses, and you can see here there's -- talks about
24 purchasing content in the line in the middle or renting
25 content.

1 It also talks about various prices that one can pay for
2 content -- or have to pay for content. It allows for the
3 definition of a rental term. Here, the example is 14 days
4 for a rental.

5 Q. Sir, did Mr. Racz invent the idea of rental of digital
6 content?

7 A. Well, we're finding a rich assortment of
8 rental approach -- approaches to rental in this table.

9 No, he did not.

10 Q. How would the device disclosed in this IBM patent
11 enforce a rental period?

12 A. The last citation drawn from Columns -- Column 10, Lines
13 43 through 50, explains that if the requested use of the
14 content does not comply with the usage conditions -- for
15 example, the number of copies has been exhausted -- then the
16 end-user device will not perform the request.

17 Q. All right. And how does the system described in this
18 patent, how is it described to operate?

19 A. They have a diagram that we can reference. This is
20 Figure 6 from the patent.

21 Q. All right. And what would you like to do to illustrate
22 how this works? That's a lot of figures.

23 A. Yeah, this is -- this is -- we can use this and draw
24 forth from this the key components that provide an
25 explanation of how this all works together.

1 You can see a lot of arrows and so forth. So I've
2 developed an animation that simplifies this, and we can watch
3 the process as it unfolds, beginning with the next slide.

4 Q. Okay. What have you just done there?

5 A. So four components of the previous slide do most of the
6 work in this diagram, and they're color-coded, and we'll --
7 we'll revisit that.

8 What I'd like to go through is a transaction, and it
9 comes out in a number of steps, 1, 2, 3, 4, and so forth, so
10 we can break it down and see how that functions.

11 Q. And are those steps described in the patent?

12 A. Yes, sir, they are.

13 Q. All right. What are you showing as Step No. 1, sir?

14 A. So Step No. 1, as described in the patent at Column 25,
15 Lines 14 through 18, the user is shown in the upper right
16 corner. A store front. And it even -- it calls it an
17 electronic digital content store -- in yellow on the lower
18 left -- is where the consumer has browsed for content and
19 made a content selection and indicates that decision by
20 sending a message with a content request and money
21 information, signified by a credit card.

22 Q. All right. Should we look at Step 2?

23 A. Please.

24 Q. What is Step 2?

25 A. Step 2 then is the response from the content store

1 explained from Column 25, Lines 63 through 67. In return, to
2 the content request, a transaction information package is
3 sent back to the user device. It contains the rules for
4 access to that content.

5 Q. All right. What is Step 3?

6 A. Step 3 then has the user device turning to the
7 clearinghouse in green, sending that house the order. The
8 receipt identifies the requested content and an indication of
9 the rules. So this is the payment process that's about to
10 take place.

11 Q. And Step 4, what is that?

12 A. Step 4 completes payment validation, assuming it's
13 approved, and we find information going back to the user
14 device from the clearinghouse. The information then, which
15 we'll see in a moment, allows the user device to go get the
16 requested content.

17 Q. And what happens if the transaction is not validated?

18 A. If the clearinghouse does not perform payment
19 validation, then the transaction will be terminated and the
20 content will be refused. That's shown by the X.

21 Q. And what happens if it is validated?

22 A. If it is validated, then the payment validation process
23 has been approved. Steps 5 and 6 are allowed. As explained
24 at Column 23, Lines 23 through 63, Step 5 has the end-user
25 device going to the content hosting site. This is where the

1 digital files for the movie or the book, whatever it is, are
2 stored. So the request goes there. And in the return for
3 the request, we see, in this case, the content is a song, and
4 it's returned to the end-user device.

5 Q. Okay. So at this point you've got content and usage
6 conditions on the user's device?

7 A. That's correct. A user device has the usage control
8 conditions, and it has the content.

9 Q. And what happens next?

10 A. Well, with a successful transaction, we've just seen the
11 user can now enjoy that content. And with each use of the
12 content, the access rules will be looked at by the machine to
13 confirm access is allowed.

14 So if you can think of rental condition, for example,
15 that may have a limit of, you know, 10 days, the rules check
16 will confirm that 10 days has not elapsed yet. If it has,
17 the consumer will have lost access to it. But if it's okay,
18 it's still in the -- within the period, then they'll get the
19 content.

20 Q. And this --

21 A. I'm sorry, this is explained at Column 10, Lines 44
22 through 50 and 24, 5 through 8.

23 Q. How does the device then store the usage conditions?

24 A. This is explained at Column 28, Lines 32 through 35.

25 The usage conditions must stay with the content in order for

1 those to be continually analyzed throughout the duration of
2 that content's life cycle in the device.

3 And so the patent explains that the two -- two ways to
4 store that information. It can be stored as a watermark
5 embedding information into the content, or it can be stored
6 in memory in the unit.

7 Q. All right, sir. And -- and so in your opinion, how does
8 the -- the Gruse technology compare to the technology
9 disclosed in the Smartflash specification?

10 A. I've just explained the -- what I've called a
11 transaction for the Gruse patent, and we described -- or I
12 described an electronic store in yellow. Smartflash calls
13 that a service provider.

14 I talked about an end-user device. Smartflash calls
15 that a terminal or a data access device.

16 I explained there's a content hosting site. Smartflash
17 calls that a data supplier.

18 And I've described the function of a financial
19 clearinghouse, which Smartflash calls a payment validation
20 authority.

21 Q. Same components or different?

22 A. Functionally and through the requirements of the claims,
23 they're the same.

24 Q. Sir, when the U.S. Patent Office issued these patents to
25 Mr. Racz, had it considered this Gruse IBM patent?

1 A. The patent -- U.S. Patent Office did not consider the
2 Gruse patent.

3 Q. And how do you know that?

4 A. I know that because the cover of the Smartflash patents
5 associated with the title information, the Patent Office
6 lists all the prior art references that it examined, and this
7 is not listed there.

8 Q. Now, did IBM ever implement the technology that's
9 described in this Gruse IBM patent?

10 A. Yes, they did, as a matter of fact.

11 Q. All right. And what are you depicting here in Slide 43?

12 A. So I've highlighted in yellow a sentence that's drawn
13 from the document you see in the background. And it might be
14 easiest to start this discussion by just reading it.

15 Q. Before you do, sir, is that Defendant's Exhibit 26?

16 A. Yes.

17 Q. Okay. Thank you. Please proceed.

18 A. Okay. IBM and the big five global music companies --
19 Universal, EMI, Bertelsmann, Time-Warner, and Sony -- will
20 today finally pull the wraps of Project Madison, the secret
21 Big Blue-led development of a piracy protected Internet music
22 delivery system. The announcement will also cover the
23 commencement of the first public trial of the technology due
24 to begin in the next few months.

25 So this is an announcement of a Project Madison, which

1 is a cooperative effort between IBM and five major music
2 labels. And the purpose is to download music to real people
3 using real equipment and real songs.

4 Q. And have you studied information about the IBM system?

5 A. Yes, I have.

6 Q. And what did you look at to understand it?

7 A. In the next slide, I listed the collection of
8 information that was available about this system.

9 First, the public proof-of-concept trial, which was
10 referred to just a moment ago, public technical information
11 was disclosed. There were press releases, public
12 demonstrations, the cooperation between IBM and the record
13 labels. And finally, it's the IBM/Gruse patent itself.

14 So the patent is the basis for the architecture in the
15 system that was put in place to allow people to download
16 songs over the Internet as part of this proof-of-concept
17 trial.

18 Q. And is it -- is it fair to use this set of information
19 to invalidate patents in this setting?

20 A. Yes, it is. One of ordinary skill, at that time,
21 wanting to know about this IBM system would have access to
22 all this information collectively, because it's all about
23 basically the same system. And so that's fair game for
24 disclosure and represents prior art.

25 Q. And what was this IBM technology called?

1 A. There were different pieces of it that carried different
2 names. In the top of this slide from Defendant's Exhibit 29,
3 we find the term electronic music management system, EMS
4 (sic). So this is the name that the IBM folks called what we
5 saw in the IBM/Gruse patent.

6 Next from Defendant's Exhibit 27, the --

7 Q. And then underneath that?

8 A. Underneath Exhibit 27?

9 Q. No. I mean, underneath the electronic music management
10 system, there's another reference to Project Madison. What
11 is that?

12 A. Excuse me. Yes. That's -- that's from Defendant's
13 Exhibit 27. Project Madison is the name that the
14 collaboration gave -- that's IBM and the music labels -- for
15 their -- their test -- proof of concept -- for their
16 cooperation.

17 Q. Okay. And then you referenced Defendant's Exhibit 33
18 and something called Album Direct. What is that?

19 A. That is the public facing name of the proof-of-concept
20 trial, the public trial.

21 Q. Why would a company run a proof-of-concept trial?

22 A. Trials or the proof-of-concept system is often done by
23 technology companies when they have a new idea or a new piece
24 of equipment or a new system to try out.

25 In this case, it's a system. Has many components. It's

1 a way to -- as the name suggests, proof-of-concept, it's a
2 way to test your ideas. This test included not only
3 technology components but consumers.

4 And to see how well -- excuse me -- to see how well that
5 interplays together, you can put out a limited feature
6 version of it to test to see if consumers like it, fine-tune
7 the technology, what-have-you.

8 So it's often done in -- in systems before a full-blown
9 rollout.

10 Q. All right. What are you comparing here in Slide 46?

11 First of all, what's on the left?

12 A. What's on the left is excerpts from Defendant's Exhibits
13 26 and 29. And in the first yellow highlight, it's the big
14 blue "led development of piracy protected Internet music
15 system.

16 And then on the lower left, it explains that IBM and
17 Sony enable their -- IBM and Sony aim to enable artists and
18 content providers to more -- take more fully advantage of the
19 enormous growth potential of the market for digitally
20 distributed music content.

21 So these excerpts talk about the -- it's kind of the
22 reasons and the goals of the IBM system.

23 Q. Including piracy protection?

24 A. Including, yes, piracy protection. It says: While
25 protecting the interest of right-holders.

1 Q. Okay. So as -- as between the IBM system and the -- the
2 Smartflash priority patents, which -- which addressed this
3 problem first?

4 A. So on the right are the summaries from the Smartflash
5 patent, and we see that the IBM system dated April 15 was
6 ahead of Smartflash.

7 Q. How do you know that Project Madison relates to the
8 Gruse/IBM patent that you've showed us?

9 A. So this slide shows two figures from the IBM patent, the
10 same one that I looked at a few minutes ago: Figure 14 and
11 Figure 16.

12 On the left, if I could click forward once, please, I
13 will highlight -- you see the user starts a download,
14 download complete. So on the left is the process that a user
15 would follow to download a song in the IBM/Gruse patent to a
16 player.

17 Once the song is on the user's device on the right,
18 Figure 16, we see in the user/player device, there's a
19 playlist. The user can select a song from that and play it.

20 So it's a download process and a playback process that
21 are described in the Gruse patent in Figures 14 and 15.

22 Q. All right, sir. We've now got an excerpt up from
23 Defendant's Exhibit 81. Would you describe this?

24 A. Yes, including the previous slide, there was a -- if I
25 could have that back, please?

1 Q. Sure.

2 A. The punctuation mark on this is that these black bars in
3 these little figures can't see on this; but if you blow those
4 up, what you find in those -- the header of every one of
5 those screenshots, it says: Madison Music Masterworks. So
6 in the IBM work is referenced Project Madison. Thank you.

7 Q. Turning back to Slide 48 and Defendant's Exhibit 81,
8 would you describe what you're referencing there?

9 A. Yes. There was a document dated February 23rd, 1999,
10 which talked about a demonstration that took place at the IBM
11 research labs. This was a demonstration of the EMM -- EMMS
12 system that is the Gruse patent system.

13 It says: During the demonstration at the Advanced
14 Technology Labs, Greg Gruse, an IBM employee, who helped
15 develop the system downloaded Dave Matthews songs from an IBM
16 virtual store.

17 This is the same Greg Gruse who's the named inventor of
18 the IBM/Gruse patent.

19 Q. And why is it significant that Mr. Gruse performed the
20 demonstration?

21 A. Well, to me, this disclosure, coupled with the
22 information from Figures 14 and 16 of the IBM/Gruse patent,
23 makes it pretty clear that the EMMS system, which was part of
24 the overall IBM project -- IBM system project is based on the
25 Gruse patent.

1 Q. What are you showing here in Slide 49, sir, referring to
2 Defendant's Exhibit 33?

3 A. So after the conclusion of the trial, this document
4 describes -- or announces their results, if you will. They
5 define the purpose, looking back at the trial, was to gather
6 proprietary research about the consumer experience of
7 purchasing and receiving music online.

8 Q. Just to be clear, sir, what is the trial that's being
9 referenced there?

10 A. This is the trial where real people downloaded real
11 music, as explained in the middle citation, a thousand
12 households in San Diego and a hundred households in Portland,
13 Maine, were the test consumers; and those participants, it
14 goes on to explain, successfully executed approximately 4,000
15 downloads encompassing some 50,000 music tracks.

16 Q. And what features were being tested during that trial?

17 A. This same document goes on to describe some of the
18 technical features that were part of that. In particular,
19 I've raised to the forefront, so we can see them, the
20 components of the system that were exercised.

21 Listed there are the content preparation component,
22 content hosting proponent -- component, clearinghouse, retail
23 software, and a client software -- client software would go
24 on a user device.

25 And the significance is apparent when we compare those

1 to the similar components to Figure 6 from the Gruse patent.

2 You may recall when I did the initial animation a few
3 moments ago, we talked about the content providers,
4 clearinghouse, electronic digital content store, and end
5 user.

6 And there's a one-to-one mapping between what is
7 described as being part of the IBM system and what we find in
8 the Gruse patent.

9 Q. So according to the yellow highlighting at the bottom
10 here on Defendant's 33, why were these features selected?

11 A. It allowed them to achieve their primary research goals,
12 and they indicate the trial validated the security features
13 and the viability of the technology. It demonstrated high
14 ease of use and overall positive consumer experience.

15 Q. Was this trial successful?

16 A. They're announcing their pleasure and that at the
17 conclusion, it was their opinion it was successful.

18 Q. What are you depicting here Slide 51? This is
19 Defendant's Exhibit 44, 45, and 240.

20 A. So this is a picture of a user device that was disclosed
21 in conjunction with the test. This is a Sony -- what's
22 called a Sony Digital Walkman, and you can see it's been
23 opened up.

24 The little white device in the middle -- you probably
25 can't read it -- but it's called a MagicGate. It's a

1 memory -- memory card. And it slips into the bottom of the
2 user device, and then the end cap goes on. So this is a
3 portable music player.

4 MR. BATCHELDER: Your Honor, may I approach?

5 THE COURT: You may.

6 Q. (By Mr. Batchelder) Sir, I've handed you what's been
7 marked as Defendant's Exhibit 240. What is that?

8 A. This is a physical specimen reflected in that picture.

9 Q. And what is the relationship between the Memory Stick
10 Walkman and the IBM system?

11 A. Next slide, please?

12 Q. We're looking at Defendant's Exhibit 29?

13 A. Yes.

14 Q. Would you summarize the importance of this?

15 A. So this is dated April 15th, 1999, and it announces that
16 Sony -- IBM, excuse me, and Sony Corp., the maker of this
17 device, are in -- to collaborate on copyright management.

18 And it describes in the highlight below: A player
19 recorder, such as a Memory Stick Walkman to receive content
20 purchased and downloaded over the Internet using EMMS.

21 Q. How does that date, April 15th, 1999, compare to
22 Smartflash's priority date here?

23 A. It's in front of or ahead of the Smartflash priority
24 date.

25 Q. And could other devices have been used with IBM's

1 system?

2 A. Yes, other devices were also disclosed in conjunction
3 with this same system. This is document, Defendant's Exhibit
4 31. It's dated October 8th, 1999, and it describes a company
5 called NTT DoCoMo; and that they will introduce a music
6 distribution system for mobile phone networks.

7 It describes that it will -- that they intend for their
8 player to be compatible or compliant to IBM's EMMS music
9 distribution system or used in combination with that.

10 And the president of the company remarked that
11 there's -- I'll just read his remark: You can always carry
12 your cell phone with you. It would be convenient if you
13 could use it to listen to music.

14 So what is disclosed here is the concept of a cell phone
15 as a music player in a wireless environment.

16 Q. Before Smartflash or after?

17 A. We're still in front of Smartflash, ahead of it.

18 Q. In Slide 54, sir, can you summarize what types of
19 devices were disclosed to be used with the IBM system?

20 A. Yes. The Sony Walkman and the DoCoMo mobile cell music
21 player were both disclosed in conjunction with this system.

22 Q. All right. Does the IBM system disclose the features of
23 Smartflash's claims?

24 A. Yes, it does.

25 Q. Did the Patent Office, when it issued the patents

1 asserted here, did it consider the IBM system when it issued
2 the patents?

3 A. No, it did not.

4 Q. How do you know?

5 A. Well, my understanding is the Patent Office, in
6 conjunction with prosecutions, doesn't take into
7 consideration systems. They look at documents and -- and
8 other such evidence, but not real-world systems.

9 Q. And nothing like this was on the face sheet of the
10 Smartflash patents, correct?

11 A. No, sir.

12 Q. And coming back to your timeline, sir, what would you
13 like to address next?

14 A. So in bold next, I'd like to discuss the Stefik/Xerox
15 patent.

16 Q. All right. What are you depicting here on Slide 56 from
17 Defendant's Exhibit 39?

18 A. This is the cover page of what I'll be calling the
19 Stefik/Xerox patent. Its title is System For Controlling the
20 Distribution and Use of Digital Works. It's assigned to
21 Xerox Company -- Corporation. The inventor is Mr. Mark
22 Stefik. The priority date is November 23rd, 1994, which is
23 just about five years ahead of Smartflash.

24 Q. All right. What were the challenges that the
25 Stefik/Xerox patent recognized, sir?

1 A. Once again, soliciting the introductory comments to the
2 patent, I've excerpted from Column 1, Lines 11 through 14,
3 and again, Lines 21 through 24, just to see what this patent
4 explains.

5 Prevent the unauthorized and unannounced distribution or
6 use of electronically published materials. It also explains
7 that unaccounted for distribution of a work. In this patent,
8 a work is a piece of content. Distribution of a work results
9 in unpaid royalty.

10 So -- excuse me, go ahead.

11 Q. And, sir, referring to these concepts, unpaid royalty,
12 unauthorized, and unaccounted distribution usage, is there a
13 name for that?

14 A. I'm sorry, the question again?

15 Q. Is there a name for unauthorized and -- and unaccounted
16 distributions?

17 A. Yes.

18 Q. What is it?

19 A. It's commonly called piracy.

20 Q. All right. What are you showing here on Slide 58? What
21 do you have on the left?

22 A. On the left are the two citations that I just referenced
23 to in the previous slide. And on the right, once again,
24 comparing that to what Smartflash talks about.

25 Having already introduced that, I'll just remind us that

1 they're talking about the Internet as a source of piracy;
2 unauthorized websites, as well, and a need to find a way to
3 address that problem. Same problem.

4 Q. Who recognized the problem first as between these two?

5 A. Xerox/Stefik patent.

6 Q. All right. Sir, Slide 59 shows Figure 1 from the
7 patent. Would you tell us what's important about this?

8 A. Yes. This is a -- the way the patent introduces
9 their -- their concept, and I'm going to animate this. But
10 just a quick introduction to where the animation came from.

11 There's a creator of content, a distributor of content.
12 There's a receiver of content, a user, and there's also a
13 billing transaction built into this process flow.

14 Q. All right. Should I click to start the animation?

15 A. Yes, please.

16 Q. Okay. And what have you broken out here?

17 A. So once again, I think it's easy to -- it's most helpful
18 to look at a series of steps, as before, numbered 1, 2, 3, et
19 cetera, and we'll take a look at what Figure 1 looks like
20 when you put it into action.

21 Q. All right. What is Step 1?

22 A. Step 1 recognizes the content creator, and this is
23 explained at Column 7, Lines 8 through 11. Content creator
24 generates content. There's associated usage rights. Goes to
25 the repository. That's a data supplier or a content

1 supplier.

2 Next step.

3 Q. Step 2?

4 A. So with a content out at the data store, content store,
5 at Column 7, Lines 16 through 22, it is explained that
6 Repository 2, or the end user device, can make a request for
7 a selected piece of content.

8 Q. And Step 3, what happens there?

9 A. Step 3, as explained in Column 7, Lines 24 through 26,
10 reminds us that as part of this system, the usage rights
11 attached to the content will be examined before access to the
12 content will be granted. So this little magnifying glass
13 represents receipt of the request at the store, and the store
14 wants to check a -- whether the rights are allowed.

15 Q. And what happens if the supplier determines that access
16 should not be allowed?

17 A. Well, click -- one click. If the usage rights, in fact,
18 are turned down because the requester, for whatever reason,
19 doesn't have the rights, then the error message will be
20 returned and the transaction terminates. This is explained
21 at Column 7, Lines 30 through 31.

22 Q. And what happens if access is allowed?

23 A. If the transaction is approved -- next click -- Step 3
24 explained in the patent at Column 7, Lines 31 through 33,
25 then the content is delivered to the consumer, along with the

1 usage rights or usage conditions for content access.

2 Q. And how do fees get paid?

3 A. So click it one more time. The billing process. The
4 patent explains that billing transaction can take place in
5 conjunction with processes associated with both the requester
6 and the supplier. And that's explained at Column 7, Lines 33
7 through 36.

8

9 Q. And do fees need to always be processed after content is
10 sent, like we just saw?

11 A. No. And we can cite to what the patent tells us about
12 that in the next slide.

13 At Column 17, Lines 30 through 32, it is explained that
14 the credit server, which is the green billing transaction
15 device in the previous slide, can act as a debit card where
16 transactions occur in real-time.

17 And so the way to think about this is go to a gas
18 station, you use your debit card, you pay for that before you
19 get gas, as opposed to using a credit card where you get your
20 gas but you may pay for that at the end of the month with a
21 check.

22 And so this system, recognizing in the real world both
23 kinds of billing processes are used and are effective, allows
24 you to choose which billing process makes sense for your
25 application -- pay before or pay after.

1 Q. All right. So how does the Xerox/Stefik disclosure
2 compare to Smartflash?

3 A. We can do a comparison. Once again, as we finish up the
4 Xerox discussion, we find a content supplier, a store front,
5 a user device, and a billing processing mechanism which maps
6 to the functions of the Smartflash patent.

7 Q. Same components?

8 A. Similar functions that can be read through the
9 requirements of the claims to invalidate the Smartflash
10 patent.

11 Q. All right. And when the Patent Office decided to issue
12 these patents to Mr. Racz, did the Patent Office consider
13 this Xerox patent?

14 A. No, it did not.

15 Q. How do you know?

16 A. Because this Xerox patent is not listed as the
17 references the U.S. Patent Office examined before allowing
18 the Smartflash patent.

19 Q. What's the next prior art reference that you'd like to
20 discuss, sir?

21 A. This is the Ginter patent from the company called
22 InterTrust Technologies. And this is the same InterTrust, by
23 the way, that we heard about -- I believe it was on the
24 opening day here -- where there was an email exchange between
25 Smartflash and Mr. Racz who was seeking financial investment

1 from InterTrust. So they own the following patent that we'll
2 look at.

3 Q. All right. We're looking now at Defendant's Exhibit 40?

4 A. Yes.

5 Q. And is it -- is this that InterTrust patent?

6 A. Yes, sir, it is.

7 Q. And would you describe it, please?

8 A. It has a title of Systems and Methods For Secure
9 Transaction Management and Electronic Rights Protection.

10 It's assigned to InterTrust Technologies Corp. Has a
11 filing date of January 8th, 1997. And the inventor -- the
12 first named inventor is Mr. Karl Ginter.

13 Q. How does that January 8, 1997 date compare to
14 Smartflash's priority date?

15 A. This is -- this is prior art to Smartflash. It's ahead
16 of Smartflash.

17 Q. What are the industry challenges recognized by the
18 InterTrust patent?

19 A. So we can, once again, look at the front part of the
20 Ginter/InterTrust patent and draw from citations both in
21 Column 2, Lines 35 through 38 and 59 through 63.

22 It is explained that content providers often need to
23 limit use to authorized activities and amounts. Authorized
24 limit use of content is what they're talking about. They
25 also explained that commercial content providers are

1 concerned with ensuring proper compensation for the use of
2 their electronic information.

3 Of course, when you have piracy, there is no
4 compensation. So same problem that Smartflash is looking at.

5 Q. Okay. And what are you depicting on Slide 72?

6 A. Once again, citations I just provided on the left,
7 compared to the similar citations that we've now seen several
8 times with Smartflash -- piracy, a need to address data
9 piracy?

10 Q. All right. And what does InterTrust disclose here to
11 address these challenges?

12 A. So let's take a look at the architecture of this system.

13 This is Figure 2 from the InterTrust/Ginter patent, and
14 I believe I've prepared color codings right up front for this
15 in the next slide.

16 Q. What have you color coded here, sir?

17 A. Content provider is shown at the top, and it generates
18 digital content. The rights distributor -- you can think of
19 again as the manager or the store front. In red is the user
20 device, and in green for money is the financial
21 clearinghouse.

22 And this is arranged in a sort of process flow, so we
23 can see how these components interact with each other. On
24 the left coming out of the content is what's called a content
25 highway.

1 So it's a way to think about how content moves around in
2 a system. One of the first exit ramps -- ramps goes to the
3 store front where the content can be placed. And when it's
4 purchased, it can take the highway down to the user
5 component.

6 On the right, the blue arrows -- you probably can't read
7 them, but they say rules and controls. And so the access
8 rules for the content are generated by the content owner.

9 They're placed out at the store, and eventually they're
10 delivered to the end user device in conjunction with a
11 purchase transaction.

12 Finally, payment is disclosed. You see the green arrow.
13 It says payments are given to the financial clearinghouse for
14 content that needs to be paid for.

15 Q. Now, how is information sent in this InterTrust
16 disclosure?

17 A. So on that content information highway, it is explained
18 that there are objects called content objects with this --
19 which this invention uses to move content around on that
20 highway. This is called a content container. There's
21 information about the content, title, author, what have you,
22 and permissions record and budgets. And these two layers are
23 where the usage conditions reside in the content object.

24 Q. All right. Can you give us an example then of how these
25 rules and controls work within the InterTrust disclosure?

1 A. Yes. Next slide, please?

2 THE COURT: Let me interrupt here. It's 12:00
3 o'clock. I'm not going to fail to break for lunch. This
4 apparently has some additional length to go in the
5 examination by the Defendant.

6 Ladies and Gentlemen, we're going to take a lunch
7 break at this time. Take your notebooks with you, if you
8 will, to the jury room. Don't discuss the case among
9 yourselves. Follow all my other instructions, and we'll be
10 back here in approximately 40, 45 minutes to continue. But
11 you're excused for lunch at this time.

12 COURT SECURITY OFFICER: All rise.

13 (Jury out.)

14 THE COURT: Be seated, please.

15 Mr. Batchelder, I want to remind you that we had a
16 very lengthy discussion in chambers about whether these
17 references would be referred to by logos, by names, by name
18 of the current assignee, by name of the inventor; and the
19 Court made it very clear, after hearing heated argument from
20 both sides, that we would refer to them by the name of the
21 inventor, slash, the assignee.

22 Both you and the witness have repeatedly referred
23 to these only by the assignee name. Sometimes the assignee
24 name, slash, the inventor name when your slide says inventor,
25 slash, assignee. It's important that you follow a clear,

1 consistent path.

2 And I'm going to direct both counsel and the
3 witness for future references to these prior art references,
4 to follow my instruction accurately and refer to them by both
5 inventor name, slash, assignee.

6 MR. CALDWELL: Understood, Your Honor. Thank you.

7 THE COURT: All right. We stand in recess for
8 lunch.

9 COURT SECURITY OFFICER: All rise.

10 (Lunch recess.)

11 CERTIFICATION

12

13 I HEREBY CERTIFY that the foregoing is a true
14 and correct transcript from the stenographic notes of the
15 proceedings in the above-entitled matter to the best of our
16 abilities.

17

18 /s/_____
19 SHEA SLOAN, CSR, RPR
20 Official Court Reporter
21 State of Texas No.: 3081
22 Expiration Date: 12/31/16

February 19, 2015

22 /s/_____
23 SHELLY HOLMES, CSR, TCRR
24 Deputy Official Court Reporter
25 State of Texas No.: 7804
Expiration Date 12/31/16